

**Report of Investigation  
Appendix**

**OSC File No. DI-08-0715**

**Volume I**

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**APPENDIX**  
(OSC File No. DI-08-0715)

Volume I

- A. Referral Letter, dated April 28, 2008, from the Office of Special Counsel.
- B. Organizational Chart for the Middle District of Alabama.
- C. Tamarah Grimes Training Schedule.
- D. Tamarah Grimes Award Nomination Form.
- E. Request for Personnel Action-Tamarah Grimes.
- F. Correspondence between the Office the Inspector General and Tamarah Grimes .
- G. E-mail, dated April 7, 2005, regarding Tamarah Grimes assignment to *U.S. v. Siegelman, et al.*
- H. E-mail, dated June 15, 2006, regarding a "Really Sweet Gesture".
- I. Letter, dated July 1, 2008, to United States Attorney Leura Canary concerning the review of the Report of Investigation from the Office of the Inspector General.
- J. Correspondence from Tamarah Grimes to Steven Mullins.
- K. Official Written Reply, dated August 31, 2008, from the Middle District of Alabama.
- L. Order, dated March 22, 2006, for Partial Sequestration by Chief United States District Judge Mark E. Fuller in *U.S. v. Don Siegelman, et al.*
- M. Transcript, dated October 31, 2006, of an Evidentiary Hearing; and transcript, dated November 17, 2006, of an Evidentiary Hearing, in *U.S. v. Don Siegelman, et al.*
- N. Contract Documents from the Middle District of Alabama.
- O. OPR file of First Assistant Untied States Attorney Patricia Watson.
- P. Memorandum Of Interview, dated September 4, 2008, from Assistant United States Attorney Ronald Gallegos.

Volume II

- Q. Report of Investigation, dated June 12, 2008, from the Office of the Inspector General, with attachments.
- R. Transcript, dated July 15, 2008, interview of Keith Baker.
- S. Transcript, dated July 28, 2008, interview of Vallie Byrdsong.
- T. Transcript, dated June 11, 2008, interview of Tamarah Grimes.
- U. Transcript, dated July 28, 2008, interview of Debbie Shaw.
- V. Statement of First Assistant United States Attorney Patricia Watson.

**A**



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

April 28, 2008

The Honorable Michael B. Mukasey  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Re: OSC File No. DI-08-0715

Dear Attorney General Mukasey:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure that establishes there is a substantial likelihood that management officials of the U.S. Department of Justice (DOJ), U.S. Attorney's Office for the Middle District of Alabama (USAO-MDAL), Montgomery, Alabama, engaged in conduct which constitutes a violation of law, rule or regulation, gross mismanagement, an abuse of authority, and a gross waste of funds.

Each United States Attorney (USA) is the chief federal law enforcement officer of the United States within his or her jurisdiction. Given this weighty responsibility and authority given to USAs as the nation's principal litigators, allegations of this nature are particularly troubling. Accordingly, I am referring these allegations to you for an investigation of these allegations and a report of your findings.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

The whistleblower, Ms. Tamarah Grimes, who consented to the release of her name, is a Paralegal in the USAO-MDAL in Montgomery. Ms. Grimes alleges that officials at USAO-MDAL have acted improperly on a number of occasions. She reports that during the prosecution of a political corruption case against former Alabama Governor Don Siegelman and former HealthSouth CEO Richard Scrushy, the prosecutors were aware of improper behavior on the part of jurors yet did not disclose it to the judge. Ms. Grimes states that a female juror, and perhaps others, was passing notes to the U.S. Marshals in the courtroom. She states that the notes

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discussed an FBI agent who was part of the prosecution team, opined that he was "cute" and inquired about his marital status. Ms. Grimes contends that the marshals passed the messages to the prosecutors, but did not inform the judge or the defense of them. Ms. Patricia Watson, First Assistant U.S. Attorney (AUSA), reportedly informed Ms. Grimes that there was nothing improper about this conduct. Indeed, the defense filed a post-trial motion for a new trial based on issues of jury misconduct, including allegations that the jurors had discussed the case outside the deliberations, and had used extrinsic information in the deliberations. Ms. Grimes contends that the juror conduct she described was not disclosed to the court as required, and, thus, was never reviewed.

Additionally, Ms. Grimes alleges that USAO-MDAL officials improperly caused the government to incur the salary, per diem and travel expenses for a contract employee for approximately 5 years, from October 20, 2002 to June 30, 2007. Ms. Grimes states that Mr. Vallie Byrdsong was hired through a personnel agency known as Aspen, to provide litigation support services for the Siegelman prosecution. Mr. Byrdsong, who was not an attorney and was pursuing his college degree online, worked on the Siegelman case until its conclusion. During that time period noted above he received his salary and expenses, in addition to payment for two trips a month home to the Washington, D.C. area. Ms. Grimes explains that there were at least 3-4 employees at USAO-MDAL who could have performed this job. She explains that Janie Crooks was hired for the position to alleviate the cost of the contract employee. Nevertheless, she was never allowed to work on the case as intended and officials at USAO-MDAL continued paying for fees and expenses associated with a contract employee.

Ms. Grimes also alleges that victim impact funds were used later to pay Mr. Byrdsong's transportation and per diem expenses. She explains that because Mr. Byrdsong worked on the Siegelman prosecution, USAO-MDAL officials wanted him to attend the week of sentencing and a celebration at Acting U.S. Attorney Louis V. Franklin, Sr.'s home. To accomplish this end, USAO-MDAL officials approved the use of victim impact funds for the costs associated with Mr. Byrdsong's travel and accommodations. Ms. Grimes alleges that the use of victim impact funds in this manner was improper.

Ms. Grimes also alleges that U.S. Attorney Leura Canary obstructed an investigation conducted by the Office of Professional Responsibility (OPR) into the conduct of Civil Assistant United States Attorney Randolph Neeley. According to the information provided the investigation took place toward the end of 2004 and the beginning of 2005. Ms. Canary did not want Mr. Neeley disciplined for an error that he had made, which resulted in the dismissal of a case. Ms. Watson, the Civil Chief at the time, instructed Ms. Grimes that OPR officials were not to be told of two incidents regarding Mr. Neeley: 1) his arrest for public intoxication while on government business to San Luis Obispo, California, and 2) the fact that Mr. Neeley had "lunged" at Ms. Watson while she was attempting to counsel him.

Ms. Watson reportedly told Ms. Grimes that USA Canary had a "soft spot" for Mr. Neeley and wanted to limit any disciplinary action that might be taken against him by OPR.

The Honorable Michael B. Mukasey  
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Subsequently, Ms. Watson asked Ms. Grimes if she would tell OPR investigators about Mr. Neeley's arrest and the "lunging" incident. Ms. Grimes replied that she would, that she would not conceal any information from OPR. When OPR officials came to investigate, the Neeley matter, they did not interview Ms. Grimes. Ms. Watson told her that her name had been deleted from the witness list. Ms. Grimes believes that her name was deleted to prevent OPR from learning about the above-described incidents. She also believes that OPR investigators never learned of Mr. Neeley's conduct. He was cleared by OPR and Ms. Watson stated that criminal charges against him were dropped after contact by USAO-MDAL.

Ms. Grimes has also disclosed these allegations to the DOJ's Office of the Inspector (DOJ OIG). At present, the OIG has declined to investigate the allegations, and intends instead, to refer her allegations to the appropriate DOJ offices, such as the Office of Professional Responsibility and to the Executive Office of U.S. Attorneys, for administrative review. In addition, in July 2007, she has filed an EEO claim. Since sending her allegations to the OIG and filing an EEO complaint, Ms. Grimes has become the subject of a criminal investigation reportedly initiated by USA Canary who requested an investigation of Ms. Grimes alleging that she improperly recorded an AUSA. Ms. Grimes vehemently denies those charges.

If true, these allegations evince a significant abuse of authority by officials at the USAO-MDAL, and USA Canary. They also would demonstrate that USAO-MDAL officials have engaged in conduct which violates a law, rule or regulation, and constitutes an abuse of authority, gross mismanagement and a gross waste of funds.

I have concluded that there is a substantial likelihood that the information the whistleblower provided to OSC discloses a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, and an abuse of authority. As previously stated, I am referring this information to you for an investigation of the whistleblower's allegations and a report of your findings within 60 days of your receipt of this letter. By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation.

In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. I must approve any additional requests for an extension of time.

The Special Counsel

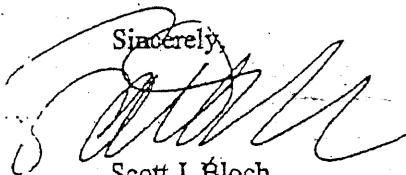
The Honorable Michael B. Mukasey  
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After making the determinations required by 5 U.S.C. § 1213(e)(2), copies of the report, along with any comments on the report from the person making the disclosure and any comments or recommendations by this office will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives. 5 U.S.C. § 1213(e)(3).

Unless classified or prohibited from release by law or by Executive Order requiring that the information be kept secret in the interest of the national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. § 1219(a).

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,



Scott J. Bloch

Enclosure

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency<sup>1</sup> and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
  - (A) changes in agency rules, regulations or practices;
  - (B) the restoration of any aggrieved employee;
  - (C) disciplinary action against any employee; and
  - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

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<sup>1</sup> Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

**B**

United States Attorney's Office  
Middle Alabama  
Montgomery, Alabama

U. S. ATTORNEY  
LEURA G. CANARY

U. S. Attorney Secretary, Bertha Moore,  
Paralegal Specialist, detailee

FIRST ASSISTANT U. S. ATTORNEY  
Patricia A. Watson

Vacant, Secretary\*

CIVIL CHIEF  
Stephen M. Doyle

ADMINISTRATIVE OFFICER  
Retta C. Goss

CRIMINAL CHIEF  
Louis V. Franklin Sr.

LAW ENFORCEMENT RELATIONS CHIEF  
John Cloud

**GENERAL CIVIL**  
Rand Nealey  
AUSA  
Jim DuBois  
AUSA  
Tamarah Grimes  
Paralegal  
Spec.  
Ann Williams,  
Paralegal  
Spec.  
DeAnne Calhoun  
Legal Asst.

**ASSET  
FORFEITURE**  
Tommie  
Hardwick,  
AUSA  
Vacant  
Paralegal  
Employee  
Stacy  
Vanlist  
FSA  
Contract  
Employee  
Jennifer  
Windham  
FSA  
Contract  
Employee

**BANKRUPTCY**  
Pat  
Conover,  
AUSA  
Carol  
Brensing  
Legal Asst.

**FINANCIAL  
LITIGATION**  
Rand Nealey  
AUSA  
Antrona  
Gardner FL  
Program  
Manager  
Marsha  
Tunnell  
Debit  
Collection  
Agent  
Dee  
Aldridge  
FSA  
Contract  
Employee

**ADMINISTRATIVE DIVISION**  
Sherri Hamilton  
Budget Officer  
Joy Mathews  
Admin Clerk  
Paulette Kindred,  
Admn Serv Assistant  
Tim Calloway IT Spec  
Vacant IT Spec  
Vacant Admin Spec.  
Carolyn Nolan Info  
Recpt  
Bryant Dyess Student  
Clerk Part-time  
Chris Lake Student Clerk  
Part-time  
Meghan Baker Student  
Clerk Part-time  
DeMonika Donner Student  
Clerk Part-time

**CRIMINAL DIVISION**  
Debbie Shaw Sup. Legal  
Assistant  
Jennifer Wagoner  
Legal Asst.  
Brittany Shookley  
Legal Asst.  
Natalie Seagers  
Legal Asst.  
Vacant  
Legal Asst.  
Carolyn Hudson  
OCDETF Legal Asst.  
Michele J. Jackson  
OCDETF Legal Asst.

**CRIMINAL DIVISION**  
Andy Schiff AUSA/SIC HCF  
Stephen Feaga AUSA  
Kent Brunson AUSA  
Todd Brown AUSA CT  
Nathan Stump AUSA PSC  
Jerusha Adams AUSA  
Matthew Shepherd AUSA PSN  
J.B. Perrine AUSA CT  
Varne Speirs OCDETF AUSA  
Susan Redmond OCDETF AUSA  
Clark Morris OCDETF AUSA  
Christopher Snyder AUSA  
Sandra Stewart AUSA  
Appellate  
Vacant AUSA  
Vacant AUSA  
Michale L. Jackson  
Paralegal Specialist

**LAW ENFCMT REL DIV.**  
Jeffrey Mattox  
Int. Res. Spec.  
Les Brown  
Investigator  
Jackie Vickers  
VW Specialist

**C**

## **TAMARAH GRIMES TRAINING**

### 2003

1. July 28<sup>th</sup> - August 1<sup>st</sup> - ACE Auditors, Investigators & Paralegal Seminar, NAC.
2. August 13<sup>th</sup> - Cahaba Safeguard CATS Training, Birmingham, AL.
3. August 20<sup>th</sup> - 21<sup>st</sup> - USAO NDAL Quarterly Meeting "Potential New Cases", Birmingham, AL.
4. September 7<sup>th</sup> - 12<sup>th</sup> - Information Technology in Litigation & Investigations, NAC.
5. November 8<sup>th</sup> - 14<sup>th</sup> - NHCAA 2003 HCF Training, Tampa, FL.
6. December 4<sup>th</sup> - NDAL Quarterly Law Enforcement Review, Birmingham, AL.
7. December 8<sup>th</sup> - 11<sup>th</sup> - Health Care Fraud Training Program, New Orleans, LA.
8. December 14<sup>th</sup> - 19<sup>th</sup> - Automated Litigation Support, NAC.

### 2004

9. March 1<sup>st</sup> - 11<sup>th</sup> - White Collar Crime Training Program FLETC, Glynco, GA.
10. April 13<sup>th</sup> - CAHABA Safeguard, Birmingham, AL.
11. May 12<sup>th</sup> - 13<sup>th</sup> - 2004 LECC District Conference. Opelika, AL
12. May 23<sup>rd</sup> - 28<sup>th</sup> - Legal Research & Analysis for Paralegals, NAC.
13. June 27<sup>th</sup> - July 1<sup>st</sup> - Civil Pretrial Practice Seminar, NAC.
14. August 23<sup>rd</sup> - 27<sup>th</sup> - ACE for Auditors, Investigators & Paralegals Seminar, NAC.
15. September 1<sup>st</sup> - 3<sup>rd</sup> - LECC Statewide Conference, Orange Beach, AL.
16. September 12<sup>th</sup> - 14<sup>th</sup> - ACE Coordinator Conference, Washington, D.C.
17. October 31<sup>st</sup> - November 5<sup>th</sup> - ALS National Conference, NAC
18. December 6<sup>th</sup> - 9<sup>th</sup> - Video Analyst System Training, Huntsville, AL.

2005

19. March 6<sup>th</sup> - 11<sup>th</sup> - Legal Writing & Analysis for Paralegals Seminar, NAC.
20. April 17<sup>th</sup> - 22<sup>nd</sup> - Financial Investigation Seminar, NAC.
21. August 10<sup>th</sup> - 11<sup>th</sup> - CaseMap Training, Atlanta, GA
22. October 5<sup>th</sup> - 7<sup>th</sup> - 18<sup>th</sup> Annual LECC Statewide Conference, Destin, FL.
23. November 13<sup>th</sup> - 18<sup>th</sup> - New EEO Counselors & Investigators Seminar, NAC.

2006

24. January 30<sup>th</sup> - February 3<sup>rd</sup> - Document & Case Management Seminar Instructor, NAC.
25. April 5<sup>th</sup> - 7<sup>th</sup> - ACE for Auditors Investigators & Paralegals Seminar, NAC.
26. October 1<sup>st</sup> - 6<sup>th</sup> - ALS Training Certification for CaseMap, NAC.
27. October 10<sup>th</sup> - 13<sup>th</sup> - Affirmative Civil Enforcement Coordinators Conference, NAC.
28. December 3<sup>rd</sup> - 5<sup>th</sup> - EEO Training for Experienced Investigators & Counselors, NAC.

2007

29. February 20<sup>th</sup> - 23<sup>rd</sup> - Immigration Litigation Training, NAC.
30. March 5<sup>th</sup> - 6<sup>th</sup> - CSA Annual Fraud Conference, Pendo Beach, FL.
31. May 14<sup>th</sup> - 18<sup>th</sup> - Criminal Asset Recovery Summit, NAC
32. June 12<sup>th</sup> - Healthcare Fraud Working Group, Birmingham, AL.
33. August 27<sup>th</sup> - 30<sup>th</sup> - Affirmative Civil Enforcement Auditors, Investigators & Paralegals Seminar Instructor, NAC.
34. November 6<sup>th</sup> - 9<sup>th</sup> - Document & Case Management Seminar, NAC.
35. December 11<sup>th</sup> - 14<sup>th</sup> - Courtroom Presentations, NAC.

2008

36. January 23<sup>rd</sup> - 25<sup>th</sup> - EEO Training for Experienced Investigators (Employee Cancelled).

**D**

**Award Nomination Form**

**Award Type**

<input type="checkbox"/> Sustained Superior Performance (SSP) or <input type="checkbox"/> Bonus		\$	<input checked="" type="checkbox"/> Special Act (SA):	\$ 1,000.00
<input type="checkbox"/> Quality Step Increase (QSI) to Step: (attach SF-52)			<input type="checkbox"/> On the Spot:	\$
<input type="checkbox"/> Time Off Award	Hours:	From Date:	To Date:	

**Employee Information**

Name:	Tamarah T. Grimes	SSN:	[REDACTED]
Office/District:	USAO/MDAL	Proposed Effective Date:	09-17-2006
Title, Series, Grade:		Paralegal Specialist, 0950, 12	
Last Award (type, amount and date):		Type:	Date:

**Justification**

(Note: Attach last official evaluation for performance-based awards, e.g., QSI, SSP)

- Making a high-quality contribution involving a difficult or important project or assignment;
- Displaying special initiative and skill in completing an assignment or project before a deadline;
- Using initiative and creativity in making improvements in a product, activity, program, or service;
- Performing added or emergency assignments in addition to regular duties;
- Demonstrating exceptional courtesy or responsiveness in dealing with the public, client agencies, or colleagues; or
- Sustained high-level performance

**Brief Description (or Attach Description):** Ms. Grimes is to be commended for her exceptional work in developing an ACE case against Jimmy Lynn Allen that resulted in a recovery of \$843,420 for the United States. Ms. Grimes identified a highway contractor for the Alabama Department of Transportation that obtained lucrative contracts by bribing government officials. The Government sought to recover these funds on an unjust enrichment theory. The contractor ultimately returned all of its profits from these transportation contracts to the United States. Ms. Grimes was also instrumental in the Government's trial victory in *Moncus v. Johans*, 2:03-cv-416-W (M.D. Ala.). *Moncus* was a difficult reverse discrimination case brought by a white male USDA employee. Ms. Grimes identified key facts for trial, prepared many of the Government's trial exhibits, helped prepare witnesses, and assisted counsel at trial. She was an invaluable member of the *Moncus* trial team.

**Endorsements**

Recommended by:	Name:	Signature:	Date:
Stephen M. Doyle, Ch.Civil Div.	Stephen M. Doyle, Ch.Civil Div.		9/12/06
Concur:	Do Not Concur:	Name:	Signature:
		Leura G. Canary	
		United States Attorney	9/12/06

Approved: \_\_\_\_\_ Director's Approval: \_\_\_\_\_

**Accounting Data - To be completed by Budget/Administrative Office**

Funds Available:	Signature:	Date:
		9-12-06

The award will be charged to the employee's payroll accounting code, unless otherwise indicated, below:  
 Account Class Code: 6E140960302

**Personnel Data - To be completed by Personnel Office POI**

Effective Date:	Nature of Action:	Authority Code:
Case Number:	Award Code:	Award Amount:
Intangible or Tangible Benefit:	Pay Code:	Address Indicator:
	PROCESS	2
Date Keyed/Initial:	Pay Period:	

Approved for processing:	<input type="checkbox"/> Performance Appraisal entered	Date:
Assistant Signature:	Specialist Signature:	

**E**

## REQUEST FOR PERSONNEL ACTION

### PART A - Requesting Office (Also complete Part B, Items 1, 7-22, 32, 33, 36 and 39.)

1. Actions Requested <b>PROMOTION: ACCRETION OF DUTIES</b>	2. Request Number
3. For Additional Information Call (Name and Telephone Number) <b>RETTA GOSS, ADMINISTRATIVE OFFICER</b>	4. Proposed Effective Date <b>06-12-2005</b>
5. Action Requested By (Typed Name, Title, Signature, and Request Date) <i>Leura G. Canary 5/5/05</i> <b>LEURA GARRETT CANARY, U. S. ATTORNEY</b>	6. Action Authorized By (Typed Name, Title, Signature, and Concurrence Date) <i>Leura G. Canary 5/5/05</i> <b>LEURA GARRETT CANARY, U. S. ATTORNEY</b>

### PART B - For Preparation of SF 50 (Use only codes in FPM Supplement 292-1, Show all dates in month-day-year order.)

1. Name (Last, First, Middle) <b>GRIMES, Tamarah T.</b>	2. Social Security Number	3. Date of Birth	4. Effective Date <b>06-12-2005</b>
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FIRST ACTION		SECOND ACTION	
5-A. Code	6-B. Nature of Action	6-A. Code	6-B. Nature of Action
5-C. Code	5-D. Legal Authority	6-C. Code	6-D. Legal Authority
5-E. Code	5-F. Legal Authority	6-E. Code	6-F. Legal Authority

7. FROM: Position Title and Number <b>PARALEGAL SPECIALIST 020001 M02003</b>	15. TO: Position Title and Number <b>PARALEGAL SPECIALIST 020001 Q02001</b>
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8. Pay Plan <b>GS</b>	9. Occ. Code <b>0950</b>	10. Grade or Level <b>11</b>	11. Step or Rate <b>04</b>	12. Total Salary <b>55,595.00</b>	13. Pay Basis <b>PA</b>	16. Pay Plan <b>GS</b>	17. Occ. Code <b>0950</b>	18. Grade or Level <b>12</b>	19. Step or Rate <b>01</b>	20. Total Salary/Award <b>\$60,576.00</b>	21. Pay Basis <b>PA</b>				
12A. Basic Pay		12B. Locality Adj.		12C. Adj. Basic Pay		12D. Other Pay		20A. Basic Pay		20B. Locality Adj.		20C. Adj. Basic Pay		20D. Other Pay	

14. Name and Location of Position's Organization	22. Name and Location of Position's Organization <b>ALABAMA, MIDDLE MONTGOMERY, ALABAMA DJ JA0200000000000000</b>
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<b>EMPLOYEE DATA</b>		24. Tenure	25. Agency Use	26. Veterans Preference for RIF
23. Veterans Preference	27. FEGLI	0 - None 1 - Permanent 2 - Conditional 3 - Indefinite	3	<input type="checkbox"/> YES <input type="checkbox"/> NO
1 - None 2 - 6-Point	3 - 10-Point/Disability 4 - 10-Point/Compensable	28. Annuitant Indicator		
3 - 10-Point/Other 6 - 10-Point/Compensable/30%	30. Retirement Plan		31. Service Comp. Date (Leaves)	
32. Work Schedule		33. Part-Time Hours Per Biweekly Pay Period		

<b>POSITION DATA</b>		35. FLSA Category	36. Appropriation Code	37. Bargaining Unit Status
34. Position Occupied	38. Duty Station Code	E - Exempt N - Nonexempt	5E14002	
1 - Competitive Service 2 - Excepted Service	3 - SES General 4 - SES Career Reserved	39. Duty Station (City - County - State or Overseas Location) <b>MONTGOMERY, MONTGOMERY, ALABAMA</b>		

40. Agency Data	41.	42.	43.	44.
45. Educational Level	46. Year Degree Attained	47. Academic Discipline	48. Functional Class	49. Citizenship
50. Veterans Status		51. Supervisory Status		

PART C - Reviews and Approvals (Not to be used by requesting office.)			
1. Office/Function	Initials/Signature	Date	Office/Function
A.			D.
B.			E.
C.			F.
			Signature
			Approval Date

2. Approval: I certify that the information entered on this form is accurate and that the proposed action is in compliance with statutory and regulatory requirements.

**PART D--Remarks by Requesting Office**

(Note to Supervisors: Do you know of additional or conflicting reasons for the employee's resignation/retirement? If "YES", please state these facts on a separate sheet and attach to SF 52.)

YES  NO

**PART E--Employee Resignation/Retirement**

**Privacy Act Statement**

You are requested to furnish a specific reason for your resignation or retirement and a forwarding address. Your reason may be considered in any future decision regarding your re-employment in the Federal service and may also be used to determine your eligibility for unemployment compensation benefits. Your forwarding address will be used primarily to mail you copies of any documents you should have or any pay or compensation to which you are entitled.

with regard to employment of individuals in the Federal service and their records, while section 8506 requires agencies to furnish the specific reason for termination of Federal service to the Secretary of Labor or a State agency in connection with administration of unemployment compensation programs.

The furnishing of this information is voluntary; however, failure to provide it may result in your not receiving: (1) your copies of those documents you should have; (2) pay or other compensation due you; and (3) any unemployment compensation benefits to which you may be entitled.

This information is requested under authority of sections 301, 3301, and 8506 of title 5, U.S. Code. Sections 301 and 3301 authorize OPM and agencies to issue regulations

- Reasons for Resignation/Retirement (NOTE: Your reasons are used in determining possible unemployment benefits. Please be specific and avoid generalizations. Your resignation/retirement is effective at the end of the day - midnight unless you specify otherwise.)

2. Effective Date	3. Your Signature	3. Date Signed	4. Forwarding Address (Number, Street, City, State, ZIP Code)
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**PART F--Remarks for SF 50**

BUDGET FUNDS ARE AVAILABLE IN PAYROLL.

*Sherril Hamilton* 5-4-05  
 SHERRI HAMILTON, BUDGET OFFICER DATE



U. S. Department of Justice

United States Attorney  
Middle District of Alabama



Memorandum

Subject	Date
Two Position Descriptions for Classification	March 4, 2005
To	From
Shelly Adams Personnel Management Specialist Personnel Staff, EOUSA BICN Bldg., Room 8017 600 E. Street, NW Washington, D.C. 20530	Retta C. Goss Administrative Officer United States Attorney Middle District of Alabama One Court Square, Suite 201 Montgomery, AL 36104

Per my U. S. Attorney Leura Canary and Stephen Doyle, Chief of the Civil Division I am enclosing two position descriptions for classification to effect promotions for two employees in the Civil Division.

The Paralegal Specialist GS-950-9 position description was previously classified in July 1995, Agency Position No. F02006. In Block 17 is the employee, Ann Williams. Ann is currently a Legal Assistant (OA) GS-986-8. They would like her PD to be classified first and request her promotion under the Accretion of Duties Promotion procedure.

The Paralegal Specialist (ACE) GS-950-12 position description is a new one. I have used models from the personnel web-site for GS-950-12 Asset Forfeiture and also a PD classified by Mary Rene Gladney in June 2000, Agency-Model No. K5007. This position is currently held by Tami Grimes as a Paralegal Specialist GS-950-11. They have also requested this promotion to be under the Accretion of Duties Promotion procedure.

I have sent you the PDs by themselves, and I know that you will need an organizational chart and SF-52s for these positions at a later time before we can finalize any promotion actions. I wanted to get a feel from you first after looking over them what time frame we could use to prepare the SF-52s.

Please review the package and if you have questions or would like to talk about it, please call me. You can reach me at 334-223-7280 Ext. 151 or cell number 334-546-1930.

I seriously appreciate all the work you do for us and time spent. Thank you very much. I look forward to your guidance.

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U. S. Department of Justice

United States Attorney  
Middle District of Alabama



Memorandum

Subject	Date
SF-52 for Accretion of Promotion for Tamarah T. Grimes, Paralegal Specialist (ACE), and Annie Williams, Paralegal Specialist	May 5, 2005
To	From
Joan Winston Personnel Management Specialist Personnel Staff, EOUSA BICN Building, Room 8017 600 E. Street, NW Washington, DC 20530	Retta C. Goss <i>Retta</i> Administrative Officer United States Attorney Middle District of Alabama One Court Square, Suite 201 Montgomery, Alabama 36104

U. S. Attorney Leura Canary and Stephen Doyle, Civil Division Chief have requested that I prepare promotion packages for the two employees listed below.

Ms. Tamarah Grimes, GS-950-11, has served as the Affirmative Civil Enforcement (ACE) Paralegal since April 4, 2003, which is also her EOD date with this office. She works with both the Civil and Criminal Division AUSAs in all ACE and Health Care Fraud matters and cases for the entire district. She is performing all the duties identified in the attached position description.

We have three GS-11s on the support staff, a paralegal specialist position who is detailed as Secretary/Assistant to the U. S. Attorney, Assistant Systems Manager who is also a Contracting Officer in the Administrative Division and a Criminal Paralegal in the Criminal Division. None of these employees have the background which would qualify them for the ACE paralegal position.

Ms. Annie Williams, GS-986-8, has served as a Legal Assistant (OA) in the Civil Division since February 10, 1992. She has been a GS-986-8 since December 20, 2001. She performs the Paralegal Specialist duties listed in the attached position description. She serves as the lead support person in the Civil Division. Since December 2004, she has singularly been responsible for the support of three AUSAs and continues to perform all her duties in an exemplary manner.

We have three GS-8s on the support staff, a Debit Collection Agent in the Financial

OFFICIAL USE ONLY

Litigation Unit, a Administrative Support Services position in the Administrative Division, and a Legal Assistant (OA) in the Criminal Division. None of these employees have the extensive qualifications that Ms. Williams possesses in the Civil area.

I have attached the graded position descriptions which are dated April 13, 2005, Documentation for Accretion of Duties forms, SF-52s, and an organizational chart for the office.

Please let me know if you need any additional information. Thank you for your help.

OFFICIAL USE ONLY

Printer Friendly version of this USAP

# UNITED STATES ATTORNEYS' PROCEDURES

USAP 3-4.335.001(M)

## Accretion of Duties Promotions

Effective Date: July 19, 2004  
 Certified Current : July 19, 2004  
 Review/Rescind: July 19, 2005  
 Last Updated: July 19, 2004

### 1. PURPOSE

To provide interpretative guidance for applying merit principles to non-competitive promotions based on accretion of higher-graded duties. **This replaces Administrative Procedures Handbook Issuance - Personnel Chapter 335 #3, Interpretive Guidance on Merit Staffing Plan.**

### 2. SCOPE

All United States Attorneys' Offices (USAOs) and the Executive Office for United States Attorneys (EOUSA).

### 3. REFERENCES

- Department of Justice (DOJ) Order 1335.1B - Department Merit Promotion Guidelines
- United States Attorneys' Manual, 3-4.335 - Promotion and Internal Placement

### 4. BACKGROUND

N/A

### 5. DEFINITIONS

Accretion of duties promotion. A non-competitive promotion occurring when an employee's position is re-classified at a higher grade based on the performance of additional duties and responsibilities.

### 6. PROCEDURES

An accretion of duties promotion may be appropriate if ALL of the following conditions are met:

1. The employee continues to perform the same basic functions of the former position, and the duties of the former position are administratively absorbed into the new position.

The approving officer must carefully compare the former position description with the new one to ensure the basic functions of the position remain unchanged, e.g.,

- Both positions must have the same supervisory code, e.g., "supervisor," "leader," or "non-supervisor." See the Guide to Personnel Data Standards for definitions of supervisory codes;
- With few exceptions, both positions must be in the same occupational series; and
- If the occupational series changes, it cannot involve change from a one- to a two-grade interval occupational series.

**2. The addition of the duties and responsibilities does not adversely affect another incumbered position.**

A non-competitive promotion may not be authorized as a result of a supervisor taking duties from one employee and assigning them to another.

**3. The addition of the duties and responsibilities does not provide one employee with an unfair advantage over other eligible/qualified employees who work in the USAO or EOUSA in the same local commuting area.**

A non-competitive promotion may not be authorized as a result of a supervisor arbitrarily assigning grade-enhancing duties to a particular employee when there are other qualified employees in the same employing organization, e.g., the USAO, and in the same local commuting area. For example, if there are three Legal Assistants, GS-986-7, in a USAO field office, each eligible for promotion, one Legal Assistant could not be non-competitively promoted because higher grade duties were assigned because this employee would receive an unfair advantage over the others.

**4. The position has no further promotion potential.**

A non-competitive promotion to a position with further promotion potential may not be authorized, e.g., promotion to a GS-7 position that has promotion potential to GS-8.

All non-competitive promotions based on an accretion of duties promotions must be documented using the attached "Documentation for Accretion of Duties Promotion" form which must be signed by both the servicing Human Resources Specialist and the supervisor. The completed form will be filed in the Official Personnel Folder with the Request for Personnel Action, SF-52.

---

POC: Policy and Special  
Programs Division  
(202) 616-6801

Attachments :  
Documentation of Accretion of Duties Promotion

BACK

**F**



U.S. Department of Justice

Office of the Inspector General

Washington, D.C. 20530

September 13, 2007

Tamarah T. Grimes

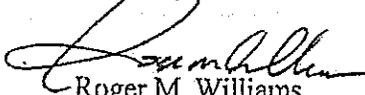
Dear Ms. Grimes:

The purpose of this letter is to acknowledge receipt of your recent correspondence to the Office of the Inspector General (OIG). Given the limited resources of the OIG, we are not able to investigate every complaint we receive. Therefore, after review of your correspondence we do not intend to open an investigation of the issue you presented. Matters such as this, however, are appropriate for administrative inquiry and review by management of the responsible agency.

We believe that this matter should be presented to the Department of Justice, Office of Professional Responsibility and the Executive Office for U.S. Attorneys and would like to forward your correspondence to those offices for review. However, the issue cannot be properly addressed unless the Office of the Inspector General discloses your identity. Without that information they could be precluded from taking any action to address the issue you have raised. At this time, we will not take any further steps to proceed without your written agreement.

Please use this form to indicate your decision, and return it to us using the enclosed pre-addressed envelope. A copy is included for your records. If you have any questions, please feel free to write to us.

Sincerely,

  
Roger M. Williams  
Special Agent in Charge  
for Operations  
Investigation Division

GRIMES0012

October 2, 2007

Roger M. Williams, SAIC  
U. S. Department of Justice - Office of Inspector General  
Investigations Division  
Washington, DC 20530

Re: Complaint filed with USDOJ-OIG/OI hotline on  
July 27, 2007

Dear SA Williams,

Thank you for your response to my complaint. I am sure that you have many demands for your investigative resources. It is unfortunate that limited resources preclude an investigation into allegations of prohibited personnel practices and obstruction of a federal investigation by a presidentially appointed U.S. Attorney.

I must respectfully decline your request to turn this matter over for administrative inquiry for the following reasons:

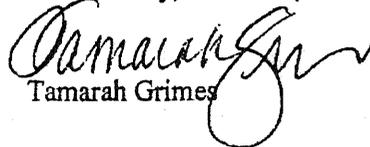
1. I do not believe that this matter can be adequately addressed by the Office of Professional Responsibility (OPR) because that agency was the victim of the alleged obstruction of a federal investigation addressed in my complaint. That would indicate a prior relationship or some sort of history between the parties under the current administration which could affect the integrity of an administrative inquiry.
2. Nor do I believe that the Executive Office of United States Attorneys will take any action against a Presidentially appointed U. S. Attorney. Mrs. Watson, the First Assistant and First Cousin of the U.S. Attorney assures me that Mrs. Canary is well respected "in Washington", which perhaps explains why she was allegedly able to obstruct the OPR investigation in the first place.
3. There are clearly established Prohibited Personnel Practices which include nepotism and violation of OPM policies. A simple review of personnel documents would establish this without a huge investment of investigative resources. I am confident that I can find someone with the resources to investigate my complaints under appropriate *Whistleblower Protections* guaranteed to federal employees.
4. Obstruction is Obstruction, no matter who allegedly commits the act. Less "respected" citizens are prosecuted for this. Does *Giglio* not apply to the Chief Federal Law Enforcement Agent for the Middle District of Alabama? How is it permissible for this administration to prosecute white collar criminals, with this allegation of serious misconduct out there un-investigated?

GRIMES0013

I appreciate your time in responding to my complaints and reading this correspondence. I understand your limitations and I hope you can understand my frustration. I mean no disrespect to you or to your agency - or to OPR or EOUSA. It is a difficult situation, but one which must be addressed by an oversight agency or committee.

This is to re-iterate that I do not wish to have my identity revealed either directly or indirectly, and I understand that this may limit or terminate any review or other action on my complaint from the U.S. Department of Justice, Office of Inspector General, Office of Investigations.

Sincerely,

  
Tamarah Grimes

GRIMES0014



U.S. Department of Justice

Office of the Inspector General

Washington, D.C. 20530

October 2, 2007

Tamarah T. Grimes

Dear Ms. Grimes,

This is to acknowledge receipt of your correspondence dated October 2, 2007 in which you declined referral of your complaint to the Office of Professional Responsibility and the Executive Office for U.S. Attorneys.

By way of explanation, the allegations you raised involving misconduct by Department of Justice attorneys in their official capacities and in the course of official investigations and proceedings are within the jurisdiction of the Office of Professional Responsibility and should be presented to that Office for review. The Office of the Inspector General is prohibited from investigating such allegations.

You may wish to present the allegations of prohibited personnel practices to the Office of Special Counsel. This federal administrative agency has jurisdiction to assist federal employees in Whistleblower protection issues, as well as matters relating to prohibited personnel practices. You should direct your correspondence to:

Office of Special Counsel  
1730 M Street, NW  
Washington, DC 20036-4505

Rest assured that your original complaint to this office will be filed for information only and will not be forwarded to any office or component without your concurrence. I hope this answers any questions you may have regarding this matter.

Sincerely,

Roger M. Williams  
Special Agent in Charge  
for Operations  
Investigations Division

GRIMES0015



U. S. Department of Justice

Office of the Inspector General

January 9, 2008

Tamarah T. Grimes

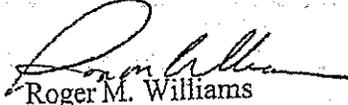
Dear Ms. Grimes:

The purpose of this letter is to acknowledge receipt of your recent correspondence to the Office of the Inspector General (OIG). Given the limited resources of the OIG, we are not able to investigate every complaint we receive. Therefore, after review of your correspondence we do not intend to open an investigation of the issue you presented. Matters such as this, however, are appropriate for administrative inquiry and review by management of the responsible agency.

We believe that this matter should be presented to the Executive Office of U.S. Attorneys and would like to forward your correspondence to that office for review. However, the issue cannot be properly addressed unless the Office of the Inspector General discloses your identity. Without that information the Executive Office of U.S. Attorneys could be precluded from taking any action to address the issue you have raised. At this time, we will not take any further steps to proceed without your written agreement.

Please use this form to indicate your decision, and return it to us using the enclosed pre-addressed envelope. A copy is included for your records. If you have any questions, please feel free to write to us.

Sincerely,

  
Roger M. Williams  
Special Agent in Charge  
for Operations  
Investigation Division

I understand that my identity may be revealed in connection with any review or other action on my complaint. I agree that review or other action on my complaint should proceed under this condition.

GRIMES0072

I do not wish to have my identity revealed either directly or indirectly, and I understand that this may limit or terminate any review or other action on my complaint.

*Dan B...*  
Signature

1-14-08  
Date

Please see attached  
correspondence.

*RB*  
1-14-08

GRIMES0073

January 14, 2008

Mr. Roger M. Williams  
**U.S. Department of Justice Office  
of Inspector General Investigations**  
Division 1425 New York Ave, NW,  
Suite 7100 Washington, DC  
20530-2001

Re: My second complaint with DOJ-OIG/OI

Dear Mr. Williams

Thank you for your correspondence of January 9, 2008. Certainly I am disappointed with your decision, especially in light of the fact that I myself was recently contacted by one of your agents and notified that I was the subject of a criminal investigation into the most spurious and ridiculous of allegations that, except for the threat of criminal prosecution, I would not have even dignified the meritless allegations with a response. I notified you of this situation by DOJ e-mail on the day it occurred, December 17, 2008. This is the only response I have received from you.

In recognition of the assertion of limited resources of the OIG, it would be helpful to me if you would explain why my easily documented complaints of criminal activity within the USAO, i.e., filing false claims with the government are more appropriate for administrative inquiry, while it is appropriate for a DOJ-OIG-OI agent to contact me and inform me that I am the subject of a criminal investigation into "tape-recording an AUSA", refuse to tell me what statute or regulation I allegedly violated or where the complaint came from.

First, let me assure you that I have not engaged in any criminal activity in any way whatsoever and I am outraged at the suggestion that I have done so. This is pure reprisal/retaliation for my complaints of wrongdoing within the district. There is no basis for any alleged criminal investigation into my activities, yet the limited resources of DOJ-OIG/OI can be utilized to in an attempt to intimidate, vex, and harass me. Please feel free to take whatever steps you deem necessary to verify my claim that this "investigation" is completely without merit and intended to intimidate me. I will gladly fly to Washington, D.C. at my own expense to review any "tape" upon which these spurious allegations are based. I am confident you will find that there is no tape because I have never taped an AUSA or engaged in any illegal conduct.

Again, as I did with my first complaint, I ask that you reconsider your decision to decline investigation on this second complaint. Should you choose not to do so, I have enclosed the form which you forwarded to me for referral of this claim to EOUSA. There is no need to protect my identity, EOUSA is aware of my previous complaints.

GRIMES0074

I submitted a complaint directly to Kenneth Melson, Director of EOUSA. I have received no response, expect for being turned over for criminal investigation by DOJ-OIG/OI.

I filed two complaints with the Office of Professional Responsibility. I have received no response, expect for being turned over for criminal investigation by DOJ-OIG/OI.

I have filed complaints with the U.S. Office of Special Counsel and have received inquiries for additional information pending potential investigation into my complaints from that agency. OSC asked if I had contacted *the Department of Justice, Office of Inspector General* for investigation and I replied that DOJ-OIG/OI had declined to investigate my complaints.

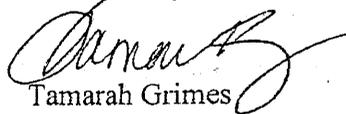
I have filed complaints with the GAO (Fraud Net), who requested permission to refer my complaints to *the Department of Justice, Office of Inspector General* for investigation.

I feel as though I am caught up in a vicious circle. Federal employees have an ethical obligation to report fraud, waste and abuse and I have done so. In response to fulfillment of my ethical obligation I have been turned over for criminal investigation by DOJ-OIG/OI, while not just one but two of my easily documented complaints have been turned away.

I request that you reconsider your decision to decline investigation into both of my complaints. Obviously, there is a problem in the USAO-Middle District of Alabama.

Your immediate attention to this matter is appreciated. As always, I am available to speak with you or to provide you with any information necessary to investigate my claims.

Sincerely,

  
Tamarah Grimes

GRIMES0075

**G**

**Grimes, Tamarah T. (USAALM)**

**From:** Snyder, Patricia  
**Sent:** Thursday, April 07, 2005 9:19 AM  
**To:** Grimes, Tamarah  
**Subject:** FW: Tami Grimes

-----Original Message-----

**From:** Doyle, Stephen  
**Sent:** Wednesday, April 06, 2005 5:49 PM  
**To:** Snyder, Patricia  
**Subject:** Re: Tami Grimes

That sounds like a great opportunity for Tami. I would like her to go over all pending ACE matters w/ Jim and I before she gets too tied up. We're doing well here. Thanks.  
Steve

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

**From:** Snyder, Patricia <Patricia.Snyder@usdoj.gov>  
**To:** Doyle, Stephen <Stephen.Doyle@usdoj.gov>  
**Sent:** Wed Apr 06 15:36:58 2005  
**Subject:** Tami Grimes

Hi, Steve. Hope you are able to get some rest. Though I know, with two, it's very hard.

I wanted to let you know that Tami has agreed to work on the big case that Steve Feaga and J.B. Parrine are busily working up. Since this case has ACE potential, having her work on it is justified. Leura and Louis both liked the concept, and Tami is excited about it as well. Because of the large volume of documents involved (80,000, I'm told), she will likely be spending significant amounts of time at the off-site facility, but she is able to check her emails and has her office phone (328-9685). She is still working her other cases as well. Leura asked me to pass this information on to you. If you have any questions/concerns, please call me. Thanks.

**H**

**From:** Watson, Patricia (USAALM)  
**Sent:** Thursday, June 15, 2006 5:04 PM  
**To:** Grimes, Tamarah T. (USAALM)  
**Subject:** RE: Really sweet gesture

I heard reports that two of the jurors were crying at the close of Louis' closing argument. I asked him what he thought that meant and he said they didn't want to have to deliberate the case.

What do you predict will happen? What did you think of Siegelman's decision not to rest without presenting any defense?

---

**From:** Grimes, Tamarah T. (USAALM)  
**Sent:** Thursday, June 15, 2006 5:01 PM  
**To:** Watson, Patricia (USAALM)  
**Subject:** RE: Really sweet gesture

Yeah, that's what Vallie said. He said one girl was a gymnast and they called her "Flipper" because she apparently did back flips to entertain the jurors. Flipper was very interested in Keith.

---

**From:** Watson, Patricia (USAALM)  
**Sent:** Thursday, June 15, 2006 4:57 PM  
**To:** Grimes, Tamarah T. (USAALM)  
**Subject:** RE: Really sweet gesture

That is really sweet -- and true. I'm glad he did that. Several times while you were at the NAC, I'd bump into him in the hall and he would always ask about you -- Is Tami in her office? What's Tami doing? He'd look so disappointed when he learned you weren't in.

I just saw Keith in the hall. The jurors kept sending out messages through the marshals. A couple of them wanted to know if he was married.

---

**From:** Grimes, Tamarah T. (USAALM)  
**Sent:** Thursday, June 15, 2006 4:44 PM  
**To:** Watson, Patricia (USAALM)  
**Subject:** Really sweet gesture

Vallie came by to see me this afternoon and thanked me for all my work on the case. He said they used my timelines, charts and tables on the CON and Rainline issues all the way through the trial. He said my CON chart was particularly helpful because the defense made some claims that could be easily refuted by referencing the chart. He said he wanted me to know that I was a part of the case and I shouldn't feel excluded. He said a lot of the agents felt the same way.

I thought that was a really sweet and touching gesture.





U.S. Department of Justice

Executive Office for United States Attorneys

Security Programs Staff

Suite 2600, Bicentennial Building  
600 F Street, NW  
Washington, DC 20530

(202) 616-6878  
FAX (202) 616-6646

Leura Canary  
United States Attorney  
United States Attorney's Office  
Middle District of Alabama  
131 Clayton Street  
Montgomery, Alabama 36104

JUL 1 2008

Dear Ms. Canary,

I have reviewed the Office of the Inspector General's (OIG) Report of Investigation (ROI) pertaining to Paralegal Specialist Tamarah Grimes. The report sets forth the investigative results of Ms. Grimes' allegation that she surreptitiously tape recorded discussions of Department of Justice employees during official meetings in which grand jury or sensitive law enforcement information may have been discussed and disclosed those tapes to an individual outside of the Department.

Based on the results of its investigation, the OIG concluded that Ms. Grimes made a number of false statements, under oath, to Federal Investigators in the context of the OIG's criminal investigation relating to the above-described matter.

Ms. Grimes serves in the position of Paralegal Specialist, GS-12. The sensitivity of a position is determined by the standards set forth in DOJ Order 2610.2A. The Paralegal Specialist position that Ms. Grimes occupies is designated as a Position Sensitivity Level 3 which requires access, or affords ready opportunity to gain access, to Secret and/or Confidential NSI and material and requires access to grand jury information. See DOJ Order 2610.2A(8)(b)(2) and (3).

Based on the information presented in the ROI, I have determined that Ms. Grimes may not be afforded the opportunity to gain access, to Secret and/or Confidential NSI material or grand jury information. Additionally, I have concluded that Ms. Grimes' continued assignment as a Paralegal Specialist poses an unnecessary and unacceptable operational security risk to the Department.

If you require additional information or would like to discuss the case, please call me on (202) 616-6878

Sincerely,

  
Gybrilla Blakes  
Chief, Personnel Security

GRIMES0149

**J**

Tamara Grimes

July 2, 2008

Mr. Steven K. Mullins  
Assistant United States Attorney  
Western District of Oklahoma  
210 W Park Avenue  
Oklahoma City, OK 73102-3003  
Confidential Communication

Re: United States Attorney's Office for the Middle District of Alabama

Dear Mr. Mullins,

This will follow our telephone conversation of July 1, 2008 wherein I advised you that at approximately 10:00 a.m. on Tuesday, July 1, 2008, I was called into the Civil Chief's Office by DOSM Les Brown.

The Civil Chief, Stephen M. Doyle, very rudely instructed me to, "sit down," and informed me that I was being placed on paid Administrative Leave. I asked why and he replied that I had been adjudicated to be "security risk."

I asked who had made the determination that I was a "security risk" and Mr. Doyle replied that it was the Executive Office for United States Attorneys.

I asked why I was considered a security risk and Mr. Doyle replied that I would be receiving a letter of explanation in the mail.

I asked what I could have done and I was advised that I would be receiving a letter of explanation in the mail.

I reminded Mr. Doyle that I was scheduled to participate as an instructor at the annual Affirmative Civil Enforcement Conference (ACE) at the National Advocacy next week. My FTE is funded by the 3% fund. I am the only 3% funded employee of the District. I asked Mr. Doyle how long I would be on paid administrative leave because I needed to be able to travel to the NAC next week. Mr. Doyle replied that I would be receiving a letter of explanation in the mail.

Mr. Doyle then stated the he had no other information for me and instructed Les Brown to escort me from the building.

Thereafter, in full view of my co-workers, I escorted to my office by DOSM, Les Brown and allowed to gather my purse. I was not allowed to take the blackberry which had been purchased for my use by the 2007 ACE allotment. The laptop computer which was purchased for me from the 2007 ACE

allotment was taken from me by management approximately one month ago. I was not allowed to box my personal belongings. I asked Mr. Brown if he wanted the key to my office and he replied that he did not.

Mr. Brown did not request my credentials, or my building access card. Again, in full view of my co-workers, Mr. Brown escorted me from the building. Once in the parking lot, Mr. Brown informed me that my access to the building had been terminated and I was not to try to return to the building for any reason whatsoever.

Today is July 2, 2008 and I have not received a letter from EOUSA to explain why I am on paid administrative leave or for how long. Since July 2007 when I filed my first complaints alleging misconduct, discrimination, fraud, waste, abuse and mismanagement by the United States Attorney, Leura Canary, and management officials of the United States Attorney's Office, I have been subjected to continuing and escalating acts of reprisal.

I thought that referring me to DOJ-OIG for an unwarranted criminal investigation was the worst thing that could have happened to me. The U.S. Attorney, Leura Canary, was the highest ranking government official present at the time the decision was made to refer me to OIG for an unwarranted criminal investigation. That criminal investigation, undertaken at the behest of the U.S. Attorney, Leura Canary is unresolved at this time. I have been suffering for almost seven (7) months under the specter of potential criminal prosecution, simply because I exercised my right as a federal employee to be free from discrimination, harassment and a hostile work environment.

My 3% fund duties have been taken away from me, forcing me to focus all of my time and energy on preparation for the ACE Conference next week. It is not a coincidence that I have been placed on paid administrative leave at this particular time, which coincides with the ACE Conference. I will be unable to attend, and unable to instruct the 3 classes assigned to me. This particular act of reprisal will adversely affect not only me, but the other members of the work group, planning committee and the conference as a whole. My co-workers on the work group and the planning committee are depending upon me to do my share. Because I have been placed on administrative leave for some unknown reason, I am unable to fulfill my obligations to my co-workers and to the students attending the annual national conference at the NAC.

This is a perfect example of the environment which I face every day in the Middle District of Alabama. Meticulously planned and carefully contrived retaliation, executed with extreme malice, for maximum harm and affect.

Please help me, Mr. Mullins. I am an honest and moral person. I love my government and my country. What has been done to me is unjust, but more importantly it shows the true face of management officials in the U.S. Attorney's Office for the Middle District of Alabama in Montgomery. Like an angry mythical goddess, when the U.S. Attorney, Leura Canary, sets her vindictive gaze upon you, judgment, ethics, standards, values, civil rights and justice are whisked aside and replaced with any method or mean necessary to achieve her goal. There are no rules, no boundaries and nothing between you and her wrath, because she is, after all is said and done, appointed by the President of the United States of America.

Presidentially appointed or not, the course of action chosen by the U.S. Attorney in response to my claims of misconduct, discrimination, fraud, waste, abuse and mismanagement by the United States

Attorney, Leura Canary, and management officials of the United States Attorney's Office, is shameful, and brings dishonor to the integrity to the U.S. Department of Justice.

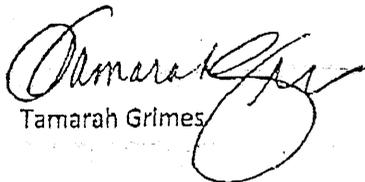
Yesterday, my co-workers, would be future claimants, witnesses and productive employees of the Department of Justice observed as I was escorted from the building by the DOSM. The message was clear: this is what happens to complainants and whistleblowers. This is what happens to those who refuse to "go along" or at least look the other way. I believe case law describes this as "a chilling effect" on future claims.

Today I am facing potential and unwarranted criminal prosecution by my own agency. I am on administrative leave for an unknown reason, for an unknown period of time and my future is very uncertain. I am not able to fulfill my program responsibilities at the annual national conference at the NAC next week. Employees from all over the nation are depending on me to do my part, to pull my weight at the conference next week, and I have no choice but to let the program down. I have no work to do because all of my work has been reassigned. The handwriting is on the wall that termination is a very real possibility for me in the very near future. At this point, the U.S. Attorney for the Middle District of Alabama is all-powerful and holds all the cards.

I am either very brave or very foolish, but when faced with the decision to "go along", look the other way or perform my duty as a federal employee and report the conduct, I chose to report the conduct. I believe it was and is the honest and moral thing to do, the right thing to do. I stand by that decision even after all the reprisal, abuse and harm I have suffered as a result of the decision to "do the right thing." I place my faith in God, this great country, and the integrity of the Department of Justice. I believe that justice will prevail.

Thank you for your dedication to this investigation. I appreciate your hard work and effort. As we move toward the Independence Day holiday, I am mindful of the many sacrifices made by others so that I might enjoy equality, liberty and freedom as a citizen of the greatest nation on earth. Perhaps one of the most well known quotes from the Declaration of Independence has particular relevance to me as I celebrate the Independence Day holiday this year, "*We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness...*"

Sincerely,

  
Tamarah Grimes

Tamarah Grimes

August 1, 2008

Mr. Steven K. Mullins  
Assistant United States Attorney  
Western District of Oklahoma  
210 W Park Avenue  
Oklahoma City, OK 73102-3003  
By Federal Express Overnight

Re: OSC Investigation

Dear Mr. Mullins,

Today, as the date of my proposed termination from federal service looms, neither my faith nor my personal standards as expressed in my July 2, 2008 correspondence have wavered. I have faith that I will be vindicated and my status as a federal employee in good standing restored.

To discredit the entire Report of Investigation dated June 12, 2008, one need read only a single document, the *Affidavit of Sharon Stokes*, taken by Special Agent Ronald Gossard at "1:35" (handwritten notation) on April 18, 2008. Ms. Stokes testifies regarding her "belief", her "perceptions", her "understanding" and her discussions with Mrs. Canary, Mrs. Watson and Mr. Menner during "socialization", presumably Happy Hour, at the Embassy Suites Hotel during an active mediation. Ms. Stokes clearly testified, *"I believe the words "tapes" and/or "tape recordings" were used during my conversations with Grimes....It was my impression, and I believe Grimes stated, there were several recordings, or several instances of recordings, made....I do not recall if the word "tapes" was a direct quote by Grimes or if I used it according to my understanding of what she was telling me."*

I am outraged that my integrity would be impugned on the basis of purely subjective "evidence", on thoughts, feelings and perceptions.

Ms. Stokes's sworn statement is allegedly supported by the *Affidavit of Frederick Menner*, taken by Special Agent Michael Thompkins at "1:40" (handwritten notation) on May 5, 2008. Mr. Menner testified by affidavit, *"During mediation, I telephonically informed my supervisor, Andrew Niedrick, Office of General Counsel, of the possibility that Grimes may have violated state or federal law, as well as disclosed private, attorney work product in an ongoing criminal investigation. I also sent Niedrick an e-mail with the suggested language for a referral to OIG or the Office of Professional Responsibility."*

There was no such allegation in the Affidavit of Sharon Stokes. In fact, Ms. Stokes never makes such an allegation. Curiously, Mr. Menner does not include the context in which his allegations originated, i.e., during "socialization" at the Embassy Suites Hotel during an active investigation. (Menner Statement, p. 3)

The basis for the unwarranted criminal investigation is easily identified in the sworn statements of the Presidentially appointed United States Attorney, Leura Canary and her cousin, the First Assistant United States Attorney, Patricia Watson.

In her sworn statement, the United States Attorney, Leura Canary, states, "*Afterwards, Watson and I accompanied Menner to the Embassy Suites Hotel in Montgomery to give him a ride and to briefly socialize.*"

Mrs. Canary, the highest ranking Federal official present at the time of mediation states, "*I thought that perhaps Grimes had recorded telephone conversations with fellow employees from her home in an attempt to obtain incriminating information to support her EEO complaint.*" ... "*I certainly feel Grimes is capable of recording her co-workers in an attempt to seek monetary gain, however, I also know she had not told the truth in other matters.*" Where is the substantive or objective evidence to support this sworn testimony? This is the person in whom the President of the United States places his confidence?

The sworn statement of Patricia Watson is equally subjective, "*During the early evening on November 1<sup>st</sup>, Menner, Canary and I were meeting in the lobby of the Embassy Suites Hotel in Montgomery, Alabama.... We were also concerned that the tapes may contain grand jury or other sensitive law enforcement information and/or privileged or work product material that was disclosed by Grimes outside the DOJ and might be further leaked outside DOJ.... The mediator used the word "tapes...."*" Where is the substantive or objective evidence to support this sworn testimony? Again, there is no such allegation by the mediator, Sharon Stokes.

It is very clear from reading the sworn statements of all participants in the "socialization" at the Embassy Suites Hotel on the evening of November 1, that mediation was used as a witch hunt or a fishing expedition. There were no good faith negotiations at any time during the mediation of November 1-2, 2007.

It is also perfectly clear that my referral for criminal investigation was concocted during Happy Hour at the Embassy Suites Hotel on November 1, 2007, with the mediator and the U.S. Attorney as active, willing participants.

The first page of my compelled interview dated March 27, 2008 is a Kalkines form which states, "*This inquiry pertains to allegations of unauthorized disclosure of sensitive law enforcement information.*" Yet, there are no questions at all pertaining to allegations of unauthorized disclosure of sensitive law enforcement information. I was compelled to drive into the office and sit for an interview, while recovering from serious injuries sustained in a fall

through the ceiling of my home *under false pretenses*. The alleged violations of law were formulated during an active period of "socialization" at the Embassy Suites Hotel. There was never any basis for this inquiry. It was pure retaliation.

By comparison, would I have received the July 21, 2008 proposed removal letter if the mediator had reported, "She must be smoking dope to expect a settlement during mediation!" and her notes said "dope", and that statement was supported by an affidavit from Mrs. Canary stating, "I thought that perhaps Grimes was selling drugs from her home, I certainly feel Grimes is capable of selling drugs in an attempt to seek monetary gain, however, I also know she had sold drugs before.."? Thereafter, I was compelled to appear for an interview into the allegation that I sold drugs from my home, but no questions were asked about "drugs" or "trafficking?" Of course not, yet this outrageous standard has been accepted by EOUSA as a legitimate basis for my proposed removal.

The ex parte account of events described in the July 21, 2008 correspondence from Mr. Paul Suddes, of the Office of the Director of the Executive Office for United States Attorneys is purely fictional. It is like reading an unauthorized autobiography written by someone who picked my name out of a phonebook because it was similar to the name of someone who had committed a real or perceived wrong against the author. The fact that this libelous document serves as the basis for my proposed removal from federal service takes my breath away.

This is a shocking abuse of authority, an unwarranted criminal investigation in retaliation for my participation in protected activity. It is textbook retaliation for participation in protected activity and for my status as a Whistleblower. I have vigorously and actively opposed the unwarranted referral to OIG for criminal investigation since the very day I learned of it on December 17, 2007. I have maintained my innocence, and addressed these retaliatory actions through proper channels, and will continue to do so until this matter is fairly resolved.

For example, the "PENALTY" section of the correspondence of July 21, 2008 is especially disturbing in its oddly perverse familiarity and pointed personal context. I have never met the person whose name is signed to the July 21, 2008 correspondence, yet it is written as an adjudication of specific alleged "crimes" of which I had no knowledge until July 22, 2008 when I received the letter. By that time, I had already been adjudicated as guilty even though despite numerous requests, I had never been advised of the charges against me.

Equally disturbing is the allegation contained in the correspondence of July 21, 2008 that there is "reasonable cause" to believe I have committed a crime for which a sentence of imprisonment may be imposed. I categorically deny that I engaged in any wrongdoing or misconduct whatsoever as alleged in the correspondence of July 21, 2008.

In support of that statement, I refer to more than five (5) years of discipline-free Federal service, five (5) years of exemplary performance evaluations, awards including a grade increase during my tenure.

Additionally, there are two (2) criminal declinations from the United States Attorney's Office for the Middle District of Georgia (1) dated March 19, 2008 on the basis that statements made during mediation were likely protected under the Confidentiality Statute, and (2) May 16, 2008 for lack of prosecutorial merit. (Exhibit 8 of the OIG Report)

Many times in the documents which I produce contemporaneously, I request to be advised of the Statute, regulation, rule, procedure or policy under which I was accused. I never received a reply until July 22, 2008, the date upon which I was given seven (7) days notice of my proposed removal from federal service. By that time, it was a done deal. I had been accused, tried and adjudicated as guilty before I even knew the charges against me. I have requested an extension of time in which to respond so that I can travel to Washington with my attorney to present my case in person. I am now scheduled to appear in Washington, DC on August 20, 2008 at 10:00 a.m. My hope is that it is not necessary to travel to Washington DC. My hope is that this travesty of justice will be obliterated before it is allowed to progress to that point.

In my response, I have included communications at various levels of the Department of Justice, including the Civil Rights Division which were not included in the IG Report, and affidavits from my attorney and a former co-worker, who was affected by the conduct which I reported as unethical and fraudulent, as well as a waste of government funds, gross mismanagement and prosecutorial misconduct. Of course, no current federal employees are willing to step forward after seeing me escorted from the building. From their perspective, the two (2) individual employees, Christa Deegan and I, who actively opposed unlawful activity were fired and escorted from the building.

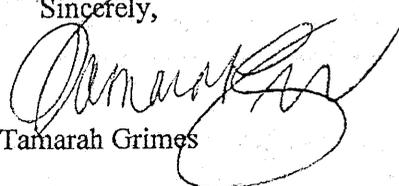
Many times in the documents which I produce along with this correspondence, I used the analogy "cut the pattern to fit the cloth" and "fruit of the poisoned tree" in reference to my persecution by the U.S. Attorney, Leura Canary, and the unwarranted criminal investigation which Ms. Canary initiated against me. Although prolific and assertive, my earnest pleas for assistance were never answered by anyone until July 22, 2008 in the form of notice of my removal from federal service.

Even as I read the correspondence of July 21, 2008, I could not believe what I was reading. It is incomprehensible to me that a high ranking official of the United States Department of Justice would affix his name to this adjudication based on an unconscionable collection of unfounded libelous allegations and outright prosecutorial misconduct.

I will produce my reply, along with this correspondence so that you will have access to the documents which I will reference.

Thank you for your assistance in this matter.

Sincerely,

  
Tamarah Grimes

**K**



U.S. Department of Justice

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August 31, 2008

Mr. Steven K. Mullins  
Civil Chief  
United States Attorney's Office  
Western District of Oklahoma  
210 West Park Avenue  
Suite 400  
Oklahoma City, Oklahoma 73102

RE: Official Written Reply

Dear Mr. Mullins:

As requested by your letter to me dated July 21, 2008, in my capacity as First Assistant U.S. Attorney for the Middle District of Alabama (MDAL), I submit the following Official Written Reply on behalf of MDAL's United States Attorney's Office (USAO). This reply addresses the five issues you are investigating on behalf of the Department of Justice pursuant to Office of Special Counsel's April 28, 2008, referral letter.

1. **Whether prosecutors in a recent public corruption case committed violations of law, rule, or regulation when they allegedly failed to disclose contacts with jurors in the criminal trial:**

The prosecutors for the Middle District of Alabama had no inappropriate contacts with any of the jurors serving on the case, either before, during or after the criminal trial. The same is true of the entire investigative and prosecution team. No member of the team had any improper contact with the trial jurors. Consequently, there were no contacts by the prosecution or investigative team that needed to be disclosed, and no violations of law, rule, or regulation by any alleged failure to disclose.

Throughout the course of the trial and afterward, the prosecutors and investigative team conducted themselves professionally and exercised the highest discretion, integrity, and honor in their dealings with the trial jurors. They did not approach or attempt any *ex parte* communication with any of the jurors either directly or indirectly through Deputy U.S. Marshals, courtroom personnel or others. There was no communication with the jurors beyond the prosecutors' participation in the trial through the in-court examination of witnesses, presentation of argument, lodging of objections to preserve the record, and other proper methods of advocacy.

During the post-trial motion phase of the trial, the criminal defendants raised arguments directed to alleged email communications between jurors. Those allegations did not involve alleged communications between the prosecution team and the jurors. The trial court conducted an evidentiary hearing and found the allegations to be without merit.<sup>1</sup> These allegations and the government's responses are matters of public record. The issue has been raised on appeal, and the USAO's position on these allegations has been fully briefed. The USAO stands on its briefs to the trial and appellate courts for a statement of its official position on these issues.

On about June 15, 2006, while the trial was ongoing, two employees of the USAO, one of whom was the undersigned, engaged in interoffice email communications, an excerpt of which follows:

[Watson:] I just saw Keith in the hall. The jurors kept sending out messages through the marshals. A couple of them wanted to know if he was married.

[Grimes:] Yeah, that's what Vallie said. He said one girl was a gymnast and they called her "Flipper" because she apparently did back flips to entertain the jurors. Flipper was very interested in Keith.

Neither of these two employees attended a single day of the Siegelman trial. Their email conveyed hearsay statements heard second or third hand. Neither employee had any personal knowledge regarding these matters. As one of the scriveners, I can confirm that I was only relaying information heard from another employee who also had not attended the trial and had no personal knowledge of the truth or falsity of the statements. I later learned the statements to be false.

Most significantly, the prosecutors were not aware of this email correspondence at any time prior to April 2008, at which time the undersigned obtained a copy of the email and brought it to their attention. Upon learning of the email, the prosecutors conducted a full inquiry into the matters discussed in the email correspondence and interviewed the prosecution and investigative teams. Based upon their inquiry, the prosecutors determined that the email was not accurate as to the statements regarding the jurors because there simply were no improper communications by and between the prosecution or investigative teams and any of the jurors, either directly or indirectly through Deputy U.S. Marshals or others.

The prosecutors have investigated the allegations and determined that there is no basis to believe that there were any improper contacts by them, the prosecution team or the investigative

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<sup>1</sup> Further, an investigation revealed that the purported emails were not authentic. This is discussed in greater detail below.

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team, directly or indirectly, with any trial juror. There have been no violations of law, rule, or regulation by any alleged failure to disclose contacts with jurors.

In this high profile criminal case, the court entered an order for partial sequestration of the jury several months in advance of trial. Pursuant to the order, the jurors in the case were partially sequestered and were kept in the custody of the United States Marshal's Service (USMS) during the hours that trial was in session. Pursuant to the order, the USMS transported the jurors to the courthouse from a secure location each day of trial. Moreover, the USMS was charged with insuring that no member of the jury had any unauthorized contact with outside persons and no discussions with outside persons pertaining to the case. The order further provided that the trial jurors could not engage in written or telephonic communication with any person except under the direct supervision of assigned USMS personnel. Communications with the court had to be made in writing, placed in a sealed envelope and turned over to USMS personnel to be delivered to the court. No one has shown any violation of the court's partial sequestration order. Indeed, because the jury was sequestered from the time of their arrival at the courthouse until they departed with USMS personnel each evening, USMS personnel would had to have been involved in or aware of any alleged passage of messages to the jurors by outsiders. USMS personnel have not reported any such misconduct to the court, the USAO, the prosecutors or any other entity.

Ms. Grimes has also alleged non-verbal flirtation during the course of the trial, which she described as "some winking" and "smiling." (Grimes Interview, p. 11, lines 8-11; p. 13, lines 11-15). Ms. Grimes did not attend any part of the trial. She claims this information was relayed to her by others. (Grimes Interview, p. 12, lines 12-22). It is my understanding that both of the persons Ms. Grimes claims conveyed the information to her have been interviewed during the course of your investigation, and that both adamantly deny any knowledge of alleged non-verbal flirtation and also deny making any such statement to Ms. Grimes. To the extent she attributes those statements to me, I did not make them and have never heard any allegations of non-verbal flirtation before now. Nonetheless, even standing alone, Ms. Grimes's allegation defies logic. If non-verbal flirtation such as winking and smiling had been occurring between a juror and any member of the prosecution or investigative team to the extent Ms. Grimes alleges it happened, it is unlikely that it would have gone unnoticed by the defendants or any of their attorneys. At one point in the trial, the defendants had more than twenty attorneys representing them, all present in the courtroom. Had the defendants or their counsel observed such conduct, it most certainly would have been brought to the attention of the court and/or the prosecutors. This never happened.

Finally, Ms. Grimes has also alleged that one of the jurors came to the USAO and met with the prosecutors after the trial to discuss the judicial process and/or a potential career as a prosecutor. She admits that she has no personal knowledge regarding the juror's alleged presence at the USAO, but claims there was "kind of a buzz" about it in the office. (Grimes

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Interview, p. 24, line 19, to p. 25, line 10). The allegation is not true. Shortly after the trial, one of the jurors contacted the USAO. The juror initiated the contact with the USAO after the trial had concluded and the verdict had been rendered, and the USAO did not solicit or otherwise encourage the contact. The juror was interested in attending law school and asked to meet with the prosecutors to discuss the judicial process generally. A story about the juror wanting to meet with the prosecutors appeared in the local newspaper, *The Montgomery Advertiser*. The prosecutors, however, decided not to meet with the juror. The juror never came to the USAO, and the prosecutors never met with that juror or any other juror.

The USAO's only knowledge of potentially improper juror contacts occurred after the trial was over and involved known and unknown agents acting either at the behest of or in an effort to assist the criminal defendants. The earliest such contact occurred when a minister in Birmingham, Alabama, went to see one of the trial jurors. The minister was a friend of one of the criminal defendants and had participated in that defendant's ministry. The minister visited the juror to discuss the juror's participation in the case. At the conclusion of the meeting, the minister wrote an affidavit for the juror, had the juror sign it, and then had the affidavit notarized outside the juror's presence. The minister delivered the affidavit to his wife, an attorney in Birmingham. Upon receiving the affidavit, the minister's wife contacted the trial attorneys for the other criminal defendant (i.e., the defendant who was not a friend of her minister husband). The defense attorneys drove from Mobile to Birmingham to discuss the affidavit. After reviewing it, the defense attorneys agreed that the Birmingham attorney should go back to the juror to obtain a second affidavit to support their client's motion for new trial. The Birmingham attorney and the minister met with the juror a second time, drafted another affidavit for him, and had him sign it in the presence of a notary. The Birmingham attorney telefaxed the affidavit to defense counsel for one of the criminal defendants, and the attorneys later shared the affidavit with defense counsel for the other criminal defendant. Both criminal defendants attached the juror's two affidavits to motions for new trial, without revealing to the court their role in producing and obtaining them.

On October 31, 2006, the trial court held an evidentiary hearing regarding the two affidavits of the trial juror. When the district court judge questioned the juror about the affidavits, the juror disavowed the majority, if not all, of the statements contained in them. The prosecutors satisfied any duty to report the defendants' potentially improper juror contacts by uncovering the foregoing facts in open court during the evidentiary hearing.

The only other potentially improper contact with the jury of which the USAO is aware also arose out of defendants' motions for new trial. The defendants filed a joint motion for new trial on the basis of purported emails allegedly exchanged between jurors during the trial and allegedly received by them after the verdict was rendered. The defendants attached to their motion copies of the purported emails and alleged that the defendants' attorneys and one of the

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criminal defendants had received them from an anonymous source via the United States mail on three different occasions, all after the defendants' conviction, in envelopes postmarked September 5, 15, and 21, 2006. The court conducted an evidentiary hearing, at which testimony was elicited from all twelve jurors concerning the issues of juror impropriety and extraneous influence. On December 13, 2006, the trial judge entered a 57-page memorandum opinion and order denying defendants' joint motion for new trial.

On December 28, 2006, one of the defendants filed a motion to reconsider, attaching to it copies of two additional purported emails between jurors that the defendant alleged were received by his counsel from an anonymous source via the United States mail. Again, these purported emails were received after the trial and conviction of the defendants, and were received by the defendant's attorneys on December 21 and 22, 2006, eight and nine days, respectively, after the trial court had denied the defendants' motion for new trial. The trial court denied this motion as well.

The purported emails appended to the defendant's motion to reconsider were also sent to co-workers of two of the jurors by an anonymous source via the United States mail. After co-workers showed the emails to the jurors, one of the jurors contacted someone at the court and was referred to the U.S. Marshal's Service. The other juror contacted the U.S. Marshal's Service directly. The U.S. Marshal's Service, in turn, contacted the USAO. The emails were turned over to the U.S. Postal Inspection Service to be investigated, and an attorney not involved in the high profile case was assigned to supervise the investigation. Based upon his investigation, the Postal Inspector concluded that the purported emails were not authentic and had been forged. He submitted the stamped envelopes and purported emails for forensic examination, but the results were inconclusive. The investigation was closed pending the development of additional evidence. As with any investigation, the investigation could not be disclosed by the USAO to anyone without a need to know and, in particular, not to persons of interest, which included anyone with a motive to fabricate the emails. No duty to disclose the investigation to the defendants arose because the investigation did not reveal any information that was exculpatory or that in any way supported the defendants' post-trial allegations. During the course of the appeal, the appellate section of the Department wrote a letter to the defendants' attorneys advising them of the investigation and the results "in an abundance of caution."

The foregoing are the only instances of possible contacts with the trial jurors of which the USAO is aware. The prosecution and investigative teams were not involved other than as described above. The prosecutors did not breach any duty of disclosure or violate any law, rule, or regulation.

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2. **Whether management officials in the MDAL committed gross mismanagement or a gross waste of funds by allegedly causing the government to unnecessarily incur the salary, per diem, and travel expenses for a contract employee hired to assist in the trial of a recent document intensive public corruption case:**

The case at issue was a high profile, document intensive public corruption criminal prosecution. When the investigation first began, there were no paralegals and only four legal assistants assigned to support the twelve criminal Assistant U.S. Attorneys (AUSAs) in the Criminal Division. The request for staffing support, which ultimately resulted in the USAO securing the assistance of the contract employee at issue, pre-dated my tenure as First Assistant U.S. Attorney. However, I have reviewed the files and documents which pertain to the contract employee and am basing this response in large part on the documentation maintained by the USAO which relates to the hiring of the contract employee. I have also confirmed the facts with personnel in the office who have personal knowledge of these matters.

Early on, the investigation generated a voluminous amount of documentary material, consisting of more than a million pages. Because of the voluminous amount of material, the sensitivity of the investigation, and heightened security concerns, the FBI established an offsite facility where the materials were stored and the prosecution and investigative teams worked. The million or more pages of documents had to be scanned, copied and digitized at the offsite facility while remaining simultaneously available to investigators and prosecutors. As early as March 2002, it was apparent that, because of the large volume of material, staffing assistance would be absolutely necessary.

The USAO was and remains a small office. It was understaffed and unable to handle the full-time project of scanning and digitizing the million or more pages of documents, particularly at an offsite location. It could not afford to reassign one of the four criminal legal assistants to the full-time project, as doing so would hinder the ability of the Criminal Division to adequately attend to the daily needs of the other criminal AUSAs and to insure that other pending cases of the district were appropriately staffed. Each member of the support staff was responsible for supporting three AUSAs and had other collateral duties associated with the day-to-day operations of the office. The investigation extended for more than three years. Even if support staff could have assisted on the project on a short term basis, they could not have been spared from the USAO for a period of several years, as would have been required. Also, the district's budget would not allow the district to hire and independently fund the litigation support needed to insure that the high profile, document intensive public corruption case was adequately staffed.

At the time in question, the U.S. Department of Justice, through the JMD Procurement Services Staff, had in place a mega-contract with Aspen Systems Corporation to provide

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litigation support services to USAOs at specified rates on an as-needed basis. In approximately June 2002, the USAO submitted a litigation support request form to EOUSA, Office Automation Staff. As of that time, the case had already generated more than fifty (50) boxes of material and evidence that needed to be evaluated and analyzed, scanned, and rendered readily accessible and searchable. The USAO requested the assistance of a support person to perform document scanning, create document databases, perform document imaging, create software to manage the documents, provide on-site trial support and perform such other litigation support as might be needed by the prosecutors and investigators. As noted above, the functions would be time-consuming and would have to be performed at the offsite, and the USAO was already understaffed and could not spare one of its four criminal legal assistants to perform the functions, certainly not for a period of three years. The prosecution team was also concerned because, if the request was disallowed, the team did not know how it would proceed with the case, and a substantial amount of resources had already been committed and expended. EOUSA reviewed and approved the USAO's request. EOUSA allocated the USAO a sum of money to expend toward the services of a contract employee procured under EOUSA's mega-contract with Aspen.

The contract employee provided excellent litigation support services to assist the USAO and the investigators on the litigation. He was on the case very early on and worked diligently to scan the voluminous records. He also wrote and developed specialized and sophisticated programs to conduct searches of the evidence databases he created. To render the documents readily accessible, the contract employee devised a series of filing and cataloging protocols for evidentiary documents, discovery materials and subpoenaed records. In short, the contract employee effectively digitized and organized a voluminous amount of records to insure that documents needed by the prosecutors and investigators could be easily identified and accessed. The entire trial team of seasoned prosecutors and investigators unanimously agree that the contract employee was indispensable to the litigation and essential to its ultimate success. The criminal case was jointly handled by this office and the DOJ Public Integrity Section (PIN). I have not spoken with him personally, but am confident that PIN attorney Richard Pilger would be an independent source who could confirm both the magnitude and quality of the work performed by the contract employee in this matter.

Contrary to the allegations, no other employee at the USAO could have performed the required tasks to the level that the contract employee performed them. Anecdotally, I was told that the contract employee knew the case and documents so well that, of the hundreds of trial exhibits, he frequently had the document the prosecutor needed at trial pulled and ready for him *before* the prosecutor even called for it. He was frequently able to discern which exhibit the prosecutor would request simply by listening to the questioning. Because he was on the case from the outset and had institutional knowledge of the case, he knew the case as well or almost as well as the prosecutors and knew which exhibits were needed at what time. To be able to do that in a case of this magnitude and complexity is an exceptional feat.

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Even Ms. Grimes, who has alleged that the USAO's use of the contract employee was a "gross mismanagement" or "gross waste of funds," admitted that the contract employee was fully engaged on the case and had plenty to do. (Grimes Interview, p. 40, lines 10-13). She acknowledged that "there were millions of documents," and that the contract employee managed them by scanning them in, keeping them in a certain order, setting up a system where he could find them and pull them up. (Grimes Interview, p. 26, lines 14-20). Moreover, Ms. Grimes stated that she was unaware of any adverse impact the cost of having the contract employee may have had upon the USAO. (Grimes Interview, p. 40, lines 14-23).

Ms. Grimes admitted that it was not out of the ordinary for a USAO to use contract employees to perform functions for the office. (Grimes Interview, p. 41, lines 1-5). Although she claimed that the justifications submitted to EOUSA to secure funding for the contract employee were not true, she admitted that she had not seen the justifications and has no personal knowledge as to what the justifications said in order to get continued funding for the contract employee. (Grimes Interview, p. 42, line 13 to p. 43, line 12). She further admitted that the office got what it paid for, and that the contract employee adequately scanned the documents and kept up with them, though she claimed he used outdated technology and was at a "disadvantage" because he lacked trial experience. (Grimes Interview, p. 48, lines 8-22).

Ms. Grimes alleged that the office was not benefitted by having the contract employee perform litigation support functions because she could have performed the functions and was at the office "doing nothing, getting a GS-12 pay ... ." (Grimes Interview, p. 45, lines 9-23). She claimed she was not engaged full time at the office. (Grimes Interview, p. 45, lines 21-23). Yet, shortly after she stopped working at the offsite on the public corruption case, Ms. Grimes reported working significant amounts of overtime on her civil caseload. Records she submitted to the USAO, which were subsequently produced to you, Mr. Mullins, established not only that Ms. Grimes was engaged full time back at the USAO, but also that she certified she was working over 40 hours per week, for which she was properly compensated by the USAO through compensatory time off or "comp time." Indeed, Ms. Grimes certified that she worked 65 hours of comp time on civil matters in calendar year 2006, the substantial majority of which (over 54 hours) was incurred during the months shortly after she stopped going to the offsite and immediately preceding the start of the criminal trial. In other words, when Ms. Grimes would have been busiest had she continued to assist with the public corruption case, she was back at the office working significant amounts of overtime on the civil caseload. These facts signify not only that Ms. Grimes was engaged full time at the office, but also that the contract employee was needed at the offsite, as Ms. Grimes admitted he had "plenty to do" managing the millions of documents.

The other options Ms. Grimes mentions – namely, USAO employees Glenna Ryals, Natalie Seagers and Janie Crooks – were also not viable alternatives to the contract employee.

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They were each needed back at the USAO to perform their assigned job duties. Ms. Ryals was one of only two legal assistants assigned to the civil defensive unit of the Civil Division. She resigned from the office effective December 25, 2004, and, thus, could not have performed the functions of the contract employee after December 2004. Ms. Seagers was one of four legal assistants assigned to the Criminal Division and the only one with developed Automated Litigation Support skills. She was needed by the other criminal AUSAs to assist with presentations of evidence at numerous trials while the public corruption case was being investigated and prepared for litigation at the offsite. She was also charged with significant responsibilities in the USAO's Project Safe Neighborhoods (PSN) program, including the duty of sending all notices of PSN indictments, verdicts and sentences to the state and local law enforcement partners. She simply could not have been spared without the Criminal Division, the PSN program and the remainder of the criminal caseload suffering exceedingly.

Ms. Crooks was the legal assistant for the Law Enforcement Coordinator. She was charged with assisting the Law Enforcement Coordinator in organizing and carrying out training and conferences, notifying and registering attendees, and maintaining records regarding conference attendance and other matters. She also served as a back up to the Victim Witness Coordinator and as a back up secretary to the U.S. Attorney, and provided administrative support to the Administrative Division. In addition, Ms. Crooks was the legal assistant for the First Assistant U.S. Attorney. Ms. Crooks, a legal assistant, did not possess the necessary skills to perform the functions assigned to the contract employee. Nonetheless, Ms. Crooks could never have performed the necessary functions of her job while at the offsite, and the USAO would have suffered as a consequence.

Periodically, as the funding for the contract employee ran low, the USAO submitted additional requests for funding to EOUSA, together with written justifications to support the requests. Each time, the USAO looked at its budget and confirmed that there were no additional dollars available to fund the contract employee without jeopardizing other critical needs of the office. The USAO was experiencing significant increases in the criminal case load, creating a pull on the criminal resources. Also, the USAO had no payroll surplus from which the contract employee could be paid.

Another key point in requesting additional funding for the contract employee was that, in April 2004, the original lead AUSA on the case resigned and, in May 2004, the trial attorney from PIN changed. Two AUSAs from the USAO were assigned to the case on a full time basis, but they had had no previous contact with the case. Although the attorneys handling the investigation and prosecution had changed, fortunately the contract employee remained the same and became even more essential because of his extensive knowledge of the case from the beginning. At that time, he became the sole person associated with the case who possessed global institutional knowledge of the case. Although many of the investigators had been

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involved from the outset, they had compartmentalized and divided up the investigation. He was the only member of the team who knew what each person had done and could put it all together. Moreover, he could quickly locate the documents to show the new AUSAs on the case what had been done before and by whom. The contract employee was intimately familiar with the evidence gathered to date and could quickly pull what the prosecutors needed, but he was also able to educate them as to what else had been done and what other evidence existed on each of the issues under investigation. No one else could do that. Moreover, the contract employee had organized the investigative data into computer files and, as of mid-2004, had created over 80,000 computer files. He was the only member of the investigative or prosecution team with knowledge of the location and contents of the files. Indeed, he was such a crucial member of the team that the prosecutors have stated they could not envision going forward with the case without the contract employee's continued assistance.

EOUSA reviewed the USAO's requests for continued funding and approved them. They had access to documents and data to review and analyze the representations made by the USAO regarding its budget and resources. EOUSA granted the funding and allowed the contract employee to remain on the case until the conviction was rendered. There has been no gross mismanagement or gross waste of funds by the USAO's use of the contract employee to provide litigation support during the investigation and trial of this high profile, complex and document intensive public corruption case.

Finally, the successful prosecution of this high profile case resulted in a substantial recovery for the United States through restitution orders and an Affirmative Civil Enforcement recovery. The amount recovered by the United States through the successful prosecution of the case exceeded all litigation costs incurred by the USAO to prosecute the case, including the cost of the contract employee.

**3. Whether management officials in the MDAL committed a violation of law, rule, or regulation when they allegedly improperly used victim impact funds to pay for a federal contractor's transportation and per diem expenses to attend the sentencing of defendants in a recent public corruption case:**

The defendants in the criminal case were not sentenced until a year after their conviction. When the sentencing was scheduled, the prosecutors discussed who would be needed as potential witnesses. They determined that the contract employee was a necessary fact witness at sentencing should the defendants raise questions about not having received particular documents in the discovery materials. The documents would be used to prove relevant conduct for the purpose of sentencing. The contract employee had been in charge of accumulating and creating hard drives containing the discovery, making him the best witness if the defense raised questions

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about what was provided to them. Accordingly, the prosecutors issued a witness subpoena to the contract employee.

Pursuant to the subpoena, the contract employee appeared for the sentencing as a fact witness. During the sentencing, the defendants did not raise issues regarding discovery which necessitated the contract employee's testimony.

Following the sentencing, the contract employee never sought reimbursement for his transportation, lodging or per diem. He never submitted an OBD-3, Fact Witness Voucher, seeking reimbursement for his appearance at the sentencing. This fact only came to light after the reimbursement issue was raised in this investigation. When the USAO learned of the investigation, it began searching for the contract employee's OBD-3 paperwork. No OBD-3 was located at the USAO or the U.S. Marshal's Service. The contract employee was then contacted and asked how his travel and per diem were paid. He confirmed that he had paid for the expenses out of his own pocket and had decided not to seek reimbursement from the government. Consequently, contrary to Ms. Grimes's allegations, no victim impact or government funds of any kind were used to pay for the contract employee's transportation or per diem to attend the sentencing. The USAO has not violated any law, rule, or regulation.

**4. Whether management officials in the MDAL committed an abuse of authority when they allegedly obstructed an investigation by the Department of Justice Office of Professional Responsibility (OPR):**

Ms. Grimes has alleged that USAO management officials, namely, the U.S. Attorney and First Assistant, obstructed an investigation by the Department of Justice Office of Professional Responsibility (OPR). She claims the management officials limited access to office employees and/or information relevant to an OPR investigation. These allegations are completely false.

Ms. Grimes's allegations stem from events which occurred more than four years ago. While I was the Civil Chief of the USAO in 2004,<sup>2</sup> I experienced performance issues with one of the employees in the division. When the issues persisted and a case was dismissed for failure to file a court-ordered response, I concluded that disciplinary action may be warranted. I notified the U.S. Attorney of the case dismissal and advised her that I wished to discipline the employee.

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<sup>2</sup> I became Civil Chief of the USAO in January 2004. Prior to that, I was a line AUSA in the office. In April 2004, the First Assistant resigned, and I replaced her. I continued as the acting Civil Chief also pending the new Civil Chief's arrival in about mid-June 2004. After the arrival of the new Civil Chief, I continued to work on the OPR referral in my capacity as First Assistant.

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The U.S. Attorney told me to handle the situation as I deemed appropriate. She advised me to work closely with General Counsel's Office (GCO) to determine how best to address the situation.

I immediately contacted GCO regarding the employee. I submitted a written outline of all of the employee's performance issues that had come to my attention as Civil Chief and requested guidance from GCO.

Upon reviewing the written outline, GCO contacted me and advised that an OPR referral was mandated pursuant to 28 C.F.R. § 45.12 and section 104.100 of the United States Attorneys' Manual. 28 C.F.R. § 45.12 provides, in pertinent part, "Department employees have a duty to, and shall, report to the Department of Justice Office of Professional Responsibility (DOJ-OPR), or to their supervisor, or their component's internal affairs office for referral to DOJ-OPR, any allegations of misconduct by a Department attorney that relate to the exercise of the attorney's authority to investigate, litigate or provide legal advice ... ." Section 104.100(B) provides that "[e]vidence and non-frivolous allegations of serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice shall be reported to OPR."

GCO took my written outline of performance issues and specifically advised me which paragraphs needed to be referred to OPR and which did not need to be included in the OPR referral. I had never before drafted or otherwise participated in an OPR referral and, therefore, I was careful to follow GCO's instructions in drafting the OPR referral letter. I included only those incidents or matters GCO instructed me to include and took out those incidents or matters GCO instructed me to take out. When I had completed my draft OPR referral letter, I submitted it to GCO for review, and it was approved by GCO before it was sent. I have provided you a complete copy of my OPR file, including all correspondence with GCO regarding the OPR referral. I believe you will find from your review of the file that the documents and emails specifically corroborate that I worked closely with GCO on the referral and followed GCO's advice.

I also gave a copy of the draft OPR referral letter to the U.S. Attorney to review. She made no substantive changes to the OPR referral letter. Once she reviewed it, I sent the letter to OPR, commencing the OPR investigation of the employee.

The U.S. Attorney at no time directed what should or should not be included in the OPR referral letter. Any allegation to the contrary is false. Her sole instructions to me were to handle the matter as I deemed appropriate. She also advised me to work closely with GCO on the matter, which I did. The U.S. Attorney left all decisions regarding the OPR referral entirely to

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my discretion, working with GCO. In drafting the OPR referral letter, it is my opinion and belief that I included all "[e]vidence and non-frivolous allegations of serious misconduct by [the Department attorney] that relate[d] to the exercise of [his] authority to investigate, litigate, or provide legal advice" of which I was aware, as required by 28 C.F.R. § 45.12 and section 1-4.100(B) of the United States Attorneys' Manual. *See also* 28 C.F.R. § 45.12.

To the best of my recollection, the U.S. Attorney and I at no time discussed what to include or not include in the OPR referral letter. All my directions in that regard came solely from GCO, as my OPR file demonstrates. I did not exclude from the OPR referral any item that GCO advised me to include.

It is true that I did not refer to OPR a matter involving the employee that occurred while he was in another state. The event took place before I was Civil Chief, and I only learned of the event second-hand when it was mentioned to me by Ms. Grimes. After Ms. Grimes mentioned it to me, I inquired about it and learned that the matter had been self-reported to management by the employee, and that it had been fully and appropriately handled by the management team in place at the time, again working with GCO, through an EAP referral. It is my understanding that the matter was not one that needed to be referred to OPR as it was not "serious misconduct by [a Department attorney] that relate[d] to the exercise of [his] authority to investigate, litigate, or provide legal advice." I also did not include an alleged "lunging" incident. Any such incident would not have constituted "serious misconduct ... relate[d] to the exercise of [the] authority to investigate, litigate, or provide legal advice."

At some point after the OPR referral letter was sent to OPR, I was contacted by an OPR investigator. The investigator asked me to provide a list of potential witnesses. I provided him the names of the employees who worked with the referred individual in the civil defensive unit of the Civil Division and any other person who might have information relevant to the matters referred. The list included Ms. Grimes as a potential witness. In providing OPR with a list of potential witnesses, I erred on the side of being overly inclusive. I made no decisions about who would or would not be interviewed. Those decisions were made solely by OPR, and I had no input into them. If OPR elected not to interview Ms. Grimes, OPR made that decision, not me or any other USAO management official. I did not at any point ask OPR not to interview Ms. Grimes or to "remove" her from the interview list, as Ms. Grimes wrongly avers. Also, I have no recollection of any conversations with the U.S. Attorney about the list. We did not discuss it at any time, either before or after its submission to OPR.

After furnishing OPR with a list of potential witnesses, I went to each of the employees privately and told them – Ms. Grimes included – that they might be contacted by OPR in regards to an ongoing OPR investigation. I advised them that the investigation did not concern them or any acts of wrongdoing alleged against them, and that they were not the subjects of the OPR

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investigation, but that if they were contacted, they had a duty to cooperate and needed to answer any questions posed to them fully and honestly. I told each of them to tell the truth. *See* 28 C.F.R. § 45.13 (Department employees have duty to cooperate fully with OIG and OPR and shall respond to questions posed during the course of an investigation; refusal to cooperate could lead to disciplinary action). That was the extent of my conversation with each potential witness employee, including Ms. Grimes. I never instructed any employee – Ms. Grimes included – to keep any matter from OPR or to refrain from mentioning any particular incident(s) or matter(s). I instructed Ms. Grimes and the other employees to answer any questions posed to them fully and to tell the truth.

My next contact with the OPR investigators was when they contacted me to set up witness interviews. The OPR investigators asked me to schedule a conference room for the interviews. They told me which witnesses they wanted to interview and the dates and times of the proposed interviews, and asked that I notify each of those employees of the interview schedule and advise OPR of any scheduling conflicts. I did exactly what OPR directed me to do. I did not play any role in deciding who OPR would or would not interview. To the best of my knowledge and information, that decision was made solely by the OPR investigators. Their names are in the file I provided to you, should you desire to contact them directly.

I have turned my entire OPR file over to you, including all email communications with GCO regarding the OPR referral. These written records substantiate the foregoing facts. My file, in particular my emails with GCO, show that I operated in all respects in strict accordance with GCO's counsel in making the OPR referral. I referred to OPR every allegation GCO instructed me to refer and left out only those GCO advised were outside the scope of OPR's jurisdiction and review. I provided OPR with the names of all of the employees of the civil defensive unit of the Civil Division or those of persons who might have information relevant to the referral. The list I provided included Ms. Grimes. OPR alone decided who they would or would not interview. I had no role in that decision. Neither I nor the U.S. Attorney in any way obstructed the OPR investigation. We did not limit access to employees or to information relevant to the OPR investigation, as alleged by Ms. Grimes.

Finally, it is my opinion and observation that the U.S. Attorney has never shown any preference for, favoritism toward or bias against any employee of the USAO. She has always treated every employee of the USAO fairly, equally and with the utmost professionalism and respect. The common goal of the U.S. Attorney and myself as First Assistant has always been and continues to be that the USAO consistently adhere to the laws, rules and regulations governing the USAO and its employees, and that we apply the requirements fairly and equally to all.

Based upon her interview, Ms. Grimes has not proven any alleged obstruction of an OPR

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investigation. Ms. Grimes has accused the U.S. Attorney and myself, the First Assistant, of obstructing an OPR investigation, but in her interview she admits that she does not know what information was collected by OPR related to the investigation. (Grimes Interview, p. 62, lines 13-18; p. 64, lines 2-4). Moreover, she has admitted that she does not know if the evidence she claims was withheld from OPR – namely, the incident which occurred in another state and an allegation that the employee “lunged” at the undersigned – was even relevant to the OPR investigation. (Grimes Interview, p. 66, lines 11-15). She conceded that the incident in the other state did not have anything to do with the dismissal of the case that was referred to OPR. (Grimes Interview, p. 61, lines 10-13). Likewise, the alleged “lunging” did not. (Grimes Interview, p. 61, lines 14-23; p. 62, lines 1-8). Ms. Grimes does not know the scope of OPR’s authority or what OPR investigates, and stated that she also did not know the scope of OPR’s investigation in this instance. (Grimes Interview, p. 68, lines 1-5; p. 65, lines 14-15).

**5. Whether management officials in the MDAL committed a violation of law, rule, or regulation, or an abuse of authority when they allegedly improperly initiated a criminal investigation of paralegal Tamarah Grimes in retaliation for participation in protected activity:**

The management officials of the USAO did not initiate any criminal investigation of paralegal specialist Tamarah Grimes. An investigation was apparently initiated at some point, but it arose solely out of Ms. Grimes’s actions or alleged actions. EOUSA independently made the referral to OIG, and the USAO did not have any involvement in referring the matter. Specifically, Ms. Grimes alleges that the U.S. Attorney directed that Ms. Grimes be referred for criminal investigation. This allegation is false. The U.S. Attorney did not refer Ms. Grimes to the OIG, nor did she direct that Ms. Grimes be referred for criminal investigation.

It is my understanding that the events which precipitated the criminal investigation occurred on about November 1-2, 2007, during a mediation of an EEO complaint Ms. Grimes had filed alleging hostile work environment, gender-based discrimination, and other acts of discrimination. Present at the mediation were the mediator; the U.S. Attorney for the Middle District of Alabama; Patricia Watson, First Assistant U.S. Attorney, Middle District of Alabama; Fred Menner, Office of General Counsel, Executive Office for United States Attorneys, Washington, D.C.; and Ms. Grimes.

The parties first met in a joint session for opening statements. Ms. Grimes read a prepared statement outlining her allegations. Approximately eight minutes into Mr. Menner’s opening statement, Ms. Grimes fled from the room. For the remainder of the mediation, the mediator met separately with Ms. Grimes, and then with the MDAL management and their counsel. Toward the end of the first day of mediation, the mediator joined the MDAL

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management and their counsel after meeting with Ms. Grimes. During the session, the mediator advised the U.S. Attorney, Mr. Menner and myself that Ms. Grimes had specifically authorized the mediator to tell us that Ms. Grimes had tape recordings that corroborated her allegations. Upon further inquiry, the mediator elaborated that it was her understanding from Ms. Grimes that the tape recordings had been made at the offsite location (where the high profile criminal case was being prepared for indictment), and that the tapes contained recordings of the attorney in question engaging in conduct she claimed supported her underlying complaint

Management's response to the mediator was that management wished to listen to the tapes. Management asked the mediator to return to Ms. Grimes and ask her to allow management to listen to the tapes. We explained that if the tapes indeed supported Ms. Grimes's allegations, as she claimed, listening to them could persuade management that Ms. Grimes's claims were meritorious and could push both sides closer to a resolution of the claims. The mediator left to meet privately with Ms. Grimes. She later returned and told us that Ms. Grimes was going to take management's request to listen to the tapes under consideration and discuss it with her attorney. The mediator told us that Ms. Grimes had stated that she had given the tapes to her attorney in Birmingham. I made a contemporaneous entry in my notes that reads, "Atty has the tapes." "Atty" is my shorthand abbreviation for "attorney." We decided to end the mediation for the day and reconvene in the morning for Ms. Grimes to report her decision as to whether management would be allowed to listen to the tapes.

At the conclusion of the mediation, the U.S. Attorney, Mr. Menner and myself decided to meet in the lobby of the Embassy Suites, where Mr. Menner was staying, to discuss the case. Upon entering, I observed the mediator in a separate section of the lobby on her cell phone. She approached us afterward and informed us that she had spoken with Ms. Grimes and that Ms. Grimes had decided not to allow management to listen to the tapes. She indicated that Ms. Grimes still wished to reconvene the mediation the following morning. After the mediator departed, we discussed concerns about Ms. Grimes having an attorney and decided to request written confirmation from Ms. Grimes in the morning that she was not represented for purposes of the mediation.

The mediation reconvened the morning of November 2. The mediator met privately with Ms. Grimes. Afterward, she met with the U.S. Attorney, Mr. Menner and myself. She reiterated that Ms. Grimes had decided not to allow management to listen to the tapes. She also provided a written statement signed by Ms. Grimes confirming earlier oral representations that Ms. Grimes was not represented for purposes of the mediation. The mediation ended around noon without the parties reaching an agreement.

It is my understanding that Ms. Grimes has since denied that she made or has any tape recordings of any USAO employees, at the offsite or otherwise. In her interview, Ms. Grimes

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stated, "I know I haven't made any tape recording." (Grimes Interview, p. 74, lines 9-10).

It is my understanding that EOUSA independently referred the matter to OIG, pursuant to 28 C.F.R. § 45.11 and the U.S. Attorney's Manual. The USAO was subsequently notified by EOUSA that it was recused from the investigation of Ms. Grimes.

The USAO did not make the referral or push for it, but the USAO certainly stands behind EOUSA's decision and believes it was mandated by regulation and the U.S. Attorney's Manual. Ms. Grimes's alleged statements to the mediator, if true, indicated that tape recordings had been made at a site where a high profile criminal case was being prepared. Those tapes may have captured sensitive grand jury, investigative, privileged, work product or otherwise protected data. Also, the tapes, if they existed, may have been made illegally and/or in violation of policies governing Department employees. If Ms. Grimes had no such tape recordings, as she now apparently contends, then Ms. Grimes may have made false statements to the government to induce the government to pay her money. At the time Ms. Grimes allegedly authorized the mediator to tell USAO management that she had tape recordings that corroborated her EEO allegations, Ms. Grimes had an offer on the table of several hundred thousand dollars. She was seeking to have the government pay her money and may have made false statements regarding corroborative tapes to induce the government to pay.

What makes Ms. Grimes's alleged conduct even more egregious is that, at the time, she was employed by the government as an Affirmative Civil Enforcement (ACE) paralegal specialist. In that capacity, Ms. Grimes is charged with protecting the government from fraud. Her job is to assist the ACE attorney in identifying and pursuing persons who may have engaged in fraud to secure money or other benefits from the government. Yet, Ms. Grimes may have instead attempted to perpetrate a fraud against the government to benefit herself financially.

28 C.F.R. § 45.11 provides, in pertinent part, "Department of Justice employees have a duty to, and shall, report to the Department of Justice Office of the Inspector General, or to their supervisor or their component's internal affairs office for referral to the Office of the Inspector General: ... (b) Any allegation of criminal or serious administrative misconduct on the part of a Department employee (except those allegations of misconduct that are required to be reported to [OPR] ... ." Section 1-4.100(A) of the U.S. Attorney's Manual provides that "[e]vidence and non-frivolous allegations of waste, fraud, abuse or other misconduct by all Department employees, including contract employees, shall be reported to OIG." Accordingly, it was not only proper to refer the foregoing allegations to OIG for investigation, it was mandated by 28 C.F.R. § 45.11 and the U.S. Attorney's Manual. Even Ms. Grimes recognizes that it is a fraud on the government to make false statements in an attempt to procure money from the government. In Ms. Grimes's own words:

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What I'm saying is when I came ... to work for the government and I was assigned as an affirmative civil enforcement [paralegal], I had extensive training on fraud and violations of the false claims act. And in my training, it is my understanding that when you file a claim with the Government and you're asking for money and your justification for that is false and you know it is false, then that's a false claim against the Government. ... When you know what you're saying is not true but you want to get the money anyway from the Government, then, to me, that's a fraud issue....

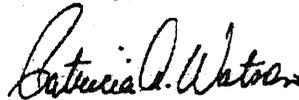
(Grimes Interview, p. 41, lines 8-23).

Even so, the USAO did not refer Ms. Grimes to the OIG or direct the referral. The U.S. Attorney did not make the referral or push for it. EOUSA made the referral. I do not know the specific individual or individuals at EOUSA who made the referral.

\* \* \*

Mr. Mullins, please accept this letter as the USAO's Official Written Reply to the five issues you are investigating. If you need any additional information or documentation, please do not hesitate to contact me or the U.S. Attorney. I can be reached at 334-551-1705.

Sincerely,



Patricia A. Watson  
First Assistant U.S. Attorney  
Middle District of Alabama

cc: The Honorable U.S. Attorney for the Middle District of Alabama  
The Honorable Jay Macklin, General Counsel

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(c) Has written or telephonic communication with any person except under the direct supervision of the assigned United States Marshals Service personnel.

(d) Any communication with the court shall be made in writing and placed in a sealed envelope by the jury or individual jurors, and upon being turned over to the United States Marshals Service personnel will be properly delivered to the court.

4. The United States Marshals Service shall admonish its personnel assigned to jury custody not to fraternize with any juror or jurors other than such as is necessary to carry out his or her specific duties set out herein, and specifically refrain from discussing his or her official duty in other cases.

DONE this the 22nd day of March, 2006.

/s/ Mark E. Fuller

CHIEF UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA

vs. CASE NO: 2:05cr119-MEF

DON EUGENE SIEGELMAN,

RICHARD M. SCRUSHY,

Defendants

\*\*\*\*\*  
EVIDENTIARY HEARING  
\*\*\*\*\*

Before The Honorable Mark E. Fuller,  
United States District Judge, at Montgomery,  
Alabama, Commencing On November 17, 2006

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APPEARANCES

FOR THE GOVERNMENT:

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(The above case, coming on for hearing at Montgomery,  
Alabama, on November 17, 2006, before the Honorable Mark E.  
Fuller, United States District Judge, the following proceedings  
were had commencing at 8:40 a.m.):

THE COURT: This morning I am going to call the case of  
United States of America versus Don Eugene Siegelman and Richard  
M. Scruschy, case number 05cr-119. Now pending before this Court  
are several motions, including the Defendant Governor Siegelman  
and Richard Scruschy's Motion for New Trial pursuant to Rule  
33(a) Federal Rules of Criminal Procedure. That is document  
number 467 for the record. By this joint motion and the  
submissions by the parties made in support of it, Defendants  
contend that their Sixth Amendment rights to a fair and  
impartial trial by a jury of their peers has been denied. The  
relevant legal precedents afford this Court for all discretion  
in selecting an approach for the consideration of the kinds of  
claims the Defendants have raised in their Joint Motion for New  
Trial.

On November the 6th, 2006 this Court entered a  
Memorandum Opinion and Order setting today's evidentiary hearing  
on which this Court will decide whether extraneous, prejudicial  
information was improperly brought to the jury's attention or  
whether any outside influence was improperly brought to bear  
upon any juror in this case. Today's hearing is going to be  
conducted entirely by the Court. The Court has issued subpoenas

1 directing certain witnesses to appear today and to testify.  
 2 These subpoenas include directions for the witnesses to bring  
 3 certain specified documents and things with them. While the  
 4 subpoenas will be maintained under seal, I have arranged that  
 5 copies be prepared for all counsel, and you will be provided a  
 6 copy of these subpoenas at the conclusion of the hearing today  
 7 with the understanding that they will be under seal.

8 The witnesses called are the Court's witnesses and I  
 9 will examine them. I do not anticipate that counsel for any of  
 10 the Defendants or the government will question any witness  
 11 called by the Court, nor do I anticipate that counsel for any  
 12 Defendant or the government will present any witnesses or  
 13 otherwise submit any evidence at this hearing today. Unlike the  
 14 hearing held on October 31st, 2006 I do not expect to allow  
 15 attorneys to propose additional follow-up questions at the end  
 16 of each witness' testimony. Instead, before the first witness  
 17 is called I will advise the parties of the specific inquiries  
 18 the Court intends to make of each witness, with the  
 19 understanding that the responses by the witnesses may generate  
 20 additional follow-up questions from the Court.

21 After hearing the inquiries the Court intends to make  
 22 of all of the witnesses the Court will allow counsel a brief  
 23 opportunity to propose additional general inquiries or to  
 24 interpose objections for the record. This is not intended to  
 25 provide an opportunity for any party to make an argument on any

1 issue ruled on by this Court prior to today's date, rather, it  
 2 is a limited opportunity to address the Court's proposed  
 3 questions to the witnesses.

4 As with the prior hearing, the Court will refer to each  
 5 juror by the jurors' number rather than their name. The  
 6 witnesses will be advised to do the same. All testimony for  
 7 witnesses at this hearing will be under oath and under penalty  
 8 of perjury. The Court is hereby invoking the rule which  
 9 prohibits any witness or potential witness from remaining in the  
 10 courtroom during these proceedings until after the witness has  
 11 been released from their subpoena. Arrangements have been made  
 12 by the marshal's office for the witnesses the Court has  
 13 subpoenaed to be maintained until they are called. All exhibits  
 14 to this hearing will be placed under seal and shall remain under  
 15 seal until further order of the Court.

16 I do not expect to entertain any argument from counsel  
 17 on any pending motion at today's hearing. Additionally, the  
 18 parties shall not, after the completion of this hearing, submit  
 19 any further argument on any pending motion without leave of  
 20 Court.

21 This hearing is open to associates of the Defendants,  
 22 members of the public and press. You are welcome here but you  
 23 must understand that the Court will not tolerate inappropriate  
 24 behavior or outbursts during these proceedings. Additionally,  
 25 you may not use cellular telephones, laptop computers or other

1 devices in this courtroom while court is in session. It is also  
 2 the Court's policy that no one may leave or enter the courtroom  
 3 except in an emergency while the witness is testifying or while  
 4 court is in session. You may only come and go from this  
 5 courtroom during the approved breaks by the Court. If you  
 6 prefer to have further flexibility about coming and going, you  
 7 may observe these proceedings from the overflow courtroom which  
 8 was maintained during the trial of this case, and that is  
 9 courtroom 2A.

10 With these ground rules set forth I will briefly go  
 11 over the questioning of each witness that I expect to conduct  
 12 during today's hearing. I will first advise the witnesses that  
 13 are called by the Court of the procedure that we will follow in  
 14 referring to any witness by their number. Their numbers have  
 15 been provided as an unmarked exhibit but they have just been  
 16 provided with their names and the juror number so that if  
 17 someone doesn't recall the juror number they can merely look  
 18 down and get that number. If you want to have a copy of that  
 19 you certainly can, counsel, but I think you will agree with me  
 20 that that information is already in the presence of the -- of  
 21 all counsel in this case. It's merely a reference by juror name  
 22 and juror number.

23 After that is explained to the jurors, and after I  
 24 present them with the subpoena, I will make that subpoena a  
 25 Court's exhibit. That exhibit will also be provided to counsel

1 at the conclusion of the hearing today. And I think that as you  
 2 will see the proceedings unfold you will have a very good  
 3 understanding of who the witnesses are that will be subpoenaed  
 4 to be testifying as Court's witnesses at the hearing today.

5 I will first explain to the jurors those ground rules  
 6 that I have described for you, and I will try to ensure them  
 7 that we are not here to intimidate them or to annoy them or  
 8 harass them or to threaten them in any manner. That is not my  
 9 intention what so ever, but merely to find the truth as to what  
 10 occurred during the deliberative process of this trial.

11 As part of my instructions to them I will read the  
 12 following: The purpose of today's hearing is to determine  
 13 whether any extraneous information was brought to the jury's  
 14 attention by any person, including by any juror, and to  
 15 determine whether any outside influence was improperly brought  
 16 to bear upon any juror. Let me define a couple of those terms  
 17 so that you know what I mean. By extraneous information I am  
 18 referring to any information other than the information the jury  
 19 received from the following sources, those being the Court's  
 20 instructions on the law, the factual evidence presented in the  
 21 case through witness testimony from the witness stand, and the  
 22 factual evidence presented in the case through the exhibits  
 23 admitted into evidence at trial. Any information that is not  
 24 from one of those three sources is extraneous information. By  
 25 outside influence I mean attempts to influence a juror's

1 thoughts about the case or the outcome of the jury's  
2 deliberations by anyone other than another juror.  
3 I will be asking you a series of questions intended to  
4 explore your knowledge. If you have any such knowledge of  
5 whether extraneous information was brought to the jury's  
6 attention or whether any outside influence was improperly  
7 brought to bear upon any juror, please limit your responses to  
8 what you know about extraneous information or outside  
9 influences. My questions are not intended to cause you to  
10 testify about statements made during the jury's deliberations  
11 other than to the extent that those statements reveal  
12 possible extraneous information or outside influences.  
13 Additionally, I am not trying to get you to testify  
14 about the effect of anything upon the actual jury deliberations,  
15 nor am I trying to get you to testify about how any information  
16 discussed by the jurors influenced any juror's mind or emotions  
17 or caused a juror or jurors to assent to those or to dissent  
18 from those reaching the verdict that they did.  
19 During your testimony I will refer to you and to any  
20 other juror by your juror number rather than by name, and I ask  
21 that you do the same for those that you may refer to. For your  
22 convenience a list of the jurors have been placed in front of  
23 you with their corresponding juror name as I have already  
24 described for you. This is intended to preserve the privacy of  
25 you and your fellow jurors.

1 All of my questions will focus on the same time frame,  
2 so for each of your statements limit your responses to the  
3 period of time starting from the date on which you took your  
4 oath as a juror in this case until the time when the jury's  
5 verdict was announced in court on June 29, 2006. I am not  
6 interested in anything relating to the period after the verdict  
7 was announced and you were released from your jury service.  
8 With those instructions in mind, I will now ask you the  
9 following questions. And for the benefit of this hearing before  
10 the first witness is called I will review the questions that I  
11 intend to ask of each of those witnesses that are going to be  
12 called by the Court. First, did anyone other than another juror  
13 try to influence your thinking about this case or your vote on  
14 the substantive counts against any Defendant? And as to each  
15 question if there is a positive response I will follow up with  
16 that juror and that response.  
17 Second question, do you have any reason to believe that  
18 any juror was subjected to attempts to influence his or her  
19 thinking about the case by anyone other than another juror?  
20 Third, did anyone other than another juror attempt to  
21 discuss the case with you during the time you were a juror in  
22 this case?  
23 Fourth, during the time that you were serving as a  
24 juror did you view any news reports or other information  
25 relating to this case or to any Defendant from sources such as

1 newspapers, magazine, radio, or television broadcasts or  
2 Internet sites?  
3 Fifth, during the time that you were serving as a juror  
4 did you view any materials from any books, newspapers, Internet  
5 sites or any other source relating to any witness, any legal  
6 issue, or any factual issue related to this case?  
7 Sixth, during the time that you were serving as a juror  
8 did you in any way attempt to independently investigate any  
9 facts or law relating to this case?  
10 Seventh, during the time that you were serving as a  
11 juror did you overhear any conversations between persons not on  
12 the jury or between non-jurors as to any member of the jury  
13 relating to this case?  
14 Eighth, during the time that you were serving as a  
15 juror did you view or hear any extraneous information about the  
16 penalty that might be applicable to any Defendant if he was  
17 convicted of the charges in this case?  
18 Ninth, during the time that you were serving as a juror  
19 did you obtain extraneous information from any source about your  
20 role as a juror, your jury service generally, or the role of the  
21 foreperson?  
22 Tenth, during the time that you served as a juror did  
23 any other juror say or do anything that caused you to believe  
24 that he or she may have been exposed to extraneous information  
25 as I have defined it about this case from any source?

1 Eleven, during the time that you were serving as a  
2 juror did you view or hear any extraneous information about  
3 either the law applicable to this case or any factual material  
4 relating to this case?  
5 And twelve, did you bring any documents in response to  
6 the subpoena relating to extraneous information?  
7 With those questions being identified by the Court as  
8 the uniform questions that will be reviewed by each of the  
9 Court's witnesses, I will hear from counsel as to any suggested  
10 general questions to be asked of these witnesses or any  
11 objections you have to the Court's proposed procedure this  
12 morning. I will begin with counsel for the United States.  
13 MR. FEAGA: Your Honor, the United States very  
14 respectfully objects to all of the questions that the Court is  
15 proposing to ask. We believe that there's only one question,  
16 possibly two with regards to three of the -- two of the jurors,  
17 but the Court we think to answer the questions raised by the  
18 defense needs to only ask them each individually if they brought  
19 anything into the jury deliberations that was extraneous to what  
20 they heard during this trial. If any of them says yes, then the  
21 Court would then want to ask them what it was. But if that  
22 juror says no, then that should end the inquiry.  
23 There are two jurors that the defense has claimed they  
24 got anonymous e-mails. Those jurors I could conceive of the  
25 Court -- the United States could conceive of the Court wanting

1 to ask them if they generated those e-mails so the Court would  
2 at least know whether they are real or not. If they say no that  
3 should be the end of the Inquiry with regard to those two  
4 jurors.

5 It's our position that that would adequately apprise  
6 the Court of what it needs to know to make a ruling on these  
7 motions that the Defendants have filed, Your Honor, without  
8 running the risk of intimidating or in any other way making the  
9 jury and the members of the jury become nervous and upset about  
10 what is happening. So, it would be our view that with regards  
11 to each one of these 12 jurors if the Court asks that juror did  
12 you bring anything into the jury deliberations besides what you  
13 got during the trial, and they say no, that should be the end of  
14 it.

15 THE COURT: What if someone else brought something in  
16 and they all saw it or they looked at it, would they include  
17 that as part of their response?

18 MR. FEAGA: Yes, Your Honor. If each juror, which we  
19 anticipate and certainly believe what will happen, says no, I  
20 did not bring anything in, then the Court at the conclusion of  
21 asking all 12 of them that question will know that nothing came  
22 in. But if you ask a juror, let's say five, any juror, you  
23 say -- picking a number -- but you ask one of the jurors did  
24 anyone bring anything in, how are they even going to know? And  
25 it puts them in a heck of a position. I just think, Your Honor,

1 that the Court should ask -- the United States believes that we  
2 are having this inquiry, you should ask each juror did you bring  
3 anything into the jury deliberations besides what you got during  
4 the trial. If that juror says no, end of inquiry. No need to  
5 go any further, Your Honor.

6 The only other thing is there are two jurors that the  
7 defense has claimed they got anonymous e-mails, and we can  
8 certainly see the Court wanting to ask those two jurors if -- or  
9 that juror if they generated those e-mails, and if they say no,  
10 that should be the end of that inquiry, Your Honor. Anything  
11 beyond that puts us in a posture where it begins to make it look  
12 like we are investigating the jury. And I know Your Honor  
13 doesn't intend to do that. I know that Your Honor doesn't  
14 intend to do that. But we are very concerned about this lengthy  
15 questioning, Your Honor, that the Court is proposing to go into  
16 because we think frankly some of those questions are going to be  
17 the types of questions where a juror may be confused or may be  
18 concerned about whether to say yes or no because they are not  
19 really going to know what the answer is. That's all -- just one  
20 moment, Your Honor.

21 THE COURT: Anything further?

22 MR. FEAGA: No, sir, Your Honor.

23 THE COURT: Counsel, I'm sorry, so that those observers  
24 in the overflow courtroom can hear what you have to say, if you  
25 have an objection for Governor Siegelman if you will make it

1 from the podium. Do you have anything that you wish to add to  
2 what has been identified by the Court or any objections for the  
3 record?

4 MR. KILBORN: Yes, Your Honor. We do not object to the  
5 questions by the Court. There are three areas we would like the  
6 Court to go further in. The Court is going to ask them if they  
7 heard or anything extraneous about the case. I think that's the  
8 word the Court used. We would like the Court to go further and  
9 ask them if they had heard anything about Defendant Siegelman or  
10 Defendant Scruschy. For instance, if they heard the names or  
11 they Googled the name Siegelman or Scruschy they would come up  
12 with a lot of additional material, not just the quote, case.

13 THE COURT: Let me address them one at a time. My  
14 fourth question says during the time that you were serving as a  
15 juror did you view any news reports or other information  
16 relating to this case or to any Defendant from sources such as  
17 newspapers, magazines, radio, television broadcasts or Internet  
18 sites.

19 MR. KILBORN: I missed the word Defendant.

20 THE COURT: I used the word Defendant.

21 MR. KILBORN: If you would specifically use the word  
22 Scruschy or Siegelman.

23 THE COURT: Any Defendant.

24 MR. KILBORN: Yes, sir. Second would be, as Your Honor  
25 knows, one of the e-mails refers to text messaging, I think it

1 says see text. If Your Honor would include in extraneous  
2 information any text messaging that they received about the case  
3 and not just e-mails, but text messaging. And the last one  
4 would be that obviously since the Court is going to have the  
5 recipients and the senders of some of the e-mails, and that  
6 e-mails would be considered Internet information, if the Court  
7 would specifically ask whether or not the jurors received any  
8 e-mails off the Internet about this case or the Defendants.

9 THE COURT: I don't want to elaborate too greatly about  
10 these e-mails, but unless the e-mails deal with what the Court  
11 has defined as extraneous information rather than the areas of  
12 deliberation with fewer than 12 of the jurors present or any  
13 correspondence between jurors outside of the collective  
14 participation of all of the jurors, that would not fall under  
15 the definition of what this Court is looking into today.

16 MR. KILBORN: I think it's a definitional issue to make  
17 sure -- some of them may not understand that Internet material  
18 would include e-mail. That's my point.

19 THE COURT: I will consider that. Anything else?

20 MR. KILBORN: No, Your Honor.

21 THE COURT: Anything on behalf of Mr. Scruschy?

22 MR. LEACH: Yes, Your Honor. Just a few things,  
23 Judge. Thank you for this hearing today. First, Judge, we  
24 don't object to the questions that you have proposed. Obviously  
25 the objective here as we have set out in the past is to conduct

1 a reasonable investigation. We do have some comments, however,  
2 Your Honor. First, Judge, if I understood you correctly you are  
3 not going to allow us to follow up after the juror has asked --  
4 answered the Court's questions; is that correct, Judge?

5 THE COURT: That's correct. That's the purpose of what  
6 I am asking you to state for the record now. And I know that it  
7 puts you at a slight disadvantage, but the Court has  
8 extraordinary discretion as I understand it to conduct these  
9 hearings, and I don't want to make this any more a laborious  
10 process for these individuals than absolutely necessary. If I  
11 think that it would require the opportunity, out of an abundance  
12 of precaution, the fairness of the Defendants and the United  
13 States, I may suspend that limitation.

14 MR. LEACH: Well, let me just tell you what my concern  
15 here is, Judge. Obviously from the defense perspective we are  
16 making a record that will eventually be reviewed by the 11th  
17 Circuit. By the procedure that you have outlined there will be  
18 no contemporaneous way for us to articulate to the 11th Circuit  
19 what our thought process is about additional questions. Now, to  
20 alleviate that what I would propose if Your Honor would allow us  
21 is if we could just hand write our thoughts, and even if you  
22 don't review it, Judge, just so the 11th Circuit could have, you  
23 know, what our thought process was on those things. But I would  
24 suggest, Judge, that as to those handwritten notes you ought to  
25 take a look at them because we might have something that, you

1 know, you have overlooked and would be of value with those  
2 jurors. And I would suggest, Judge, that would help us in terms  
3 of the reasonable investigation here.

4 Judge, I won't belabor, we did get your order with  
5 regard to the procedures that we filed under seal, we just want  
6 to maintain our objection for appellate purposes with regard to  
7 what you have done. Judge, I would also suggest to you that in  
8 terms of your questioning, I think it should include questions  
9 of the jurors in terms of what computers they used, what e-mail  
10 services they used. And I would suggest to Your Honor that that  
11 ought to be front-loaded and it ought to be front-loaded only  
12 because obviously you want truthful testimony from everyone who  
13 will testify here today. And I think just the Court's awareness  
14 of those items to include what Mr. Kilborn referred to in terms  
15 of text messaging, you know, in those questions. I think the  
16 order of inquiry will be important in that regard just in terms  
17 of letting the jurors know that the Court is aware of those  
18 issues.

19 Judge, I would ask that you ask a question towards the  
20 front end whether the jurors have been questioned by anyone with  
21 regard to the testimony that they are here to give today, to  
22 include members of the press, people from the government, and we  
23 certainly don't object to you asking whether --

24 THE COURT: After the verdict was rendered?

25 MR. LEACH: Yes, sir. Well, at any point, but, you

1 know, I would suggest that's the area of inquiry here today.  
2 Judge, on question number four, and I listened to you go over it  
3 again with Mr. Kilborn and I think I have got this right. I  
4 believe the time period that you have articulated does not  
5 include any research that may have been conducted by the juror  
6 between the time that they received their summons and became a  
7 juror. And I would ask that you encompass that period as well.  
8 In other words, they -- by what you have set out they may have  
9 done the research, possessed the documents, and they technically  
10 don't fit within your question, and that extraneous information  
11 may have been what could have been utilized. So I would ask  
12 that in question number four you just expand your time period to  
13 include the period from summons to the time that they actually  
14 came in and became jurors.

15 Now, Judge, you -- I think this related to the gallery,  
16 but some of the lawyers here have laptops, are we allowed to use  
17 our laptops?

18 THE COURT: Yes, you would. We will conduct this  
19 hearing just like we did with the trial, is my point.

20 MR. LEACH: Yes, sir. Okay. Could I have one moment  
21 to consult with counsel?

22 THE COURT: You may. Needless to say we will conduct  
23 this just like we did with the trial with the exception of that  
24 lavalliere microphone that we had so much trouble with.

25 (Pause)

1 MR. LEACH: Judge, just one correction in terms of the  
2 argument made by the government, that I believe there are four  
3 separate jurors. Now, of course, we don't know the e-mail  
4 addresses so it may be three jurors, but I would suggest to the  
5 Court there's at least three jurors involved with the e-mails.  
6 And if the Court -- I know the Court is directing towards the  
7 extraneous information having to do with punishment, that would  
8 be one of the either third or fourth jurors.

9 And finally, Judge, just want to say thank you once  
10 again for having this hearing today, and it's clear that once  
11 again you have carefully thought through this process and we  
12 appreciate it.

13 THE COURT: Anything further by the United States? And  
14 if you do make sure you approach the podium, Mr. Feaga.

15 MR. FEAGA: Yes, sir. Your Honor, the United States  
16 wants to respond very briefly to what has occurred now with  
17 regards to the defense attorneys that have addressed the Court.  
18 Your Honor, Mr. Leach has now asked the Court to ask additional  
19 questions. As you know, we object to the extensive questioning  
20 that we think the Court intends to go into with the jury based  
21 on the allegations that are before the Court. Mr. Leach has now  
22 asked the Court to ask the jurors who, if anyone, they talked to  
23 post-trial. Then he asked the Court to inquire of them from the  
24 time they were struck until the time they began to serve, have  
25 they been exposed to any extraneous information.

21  
Your Honor, what they are clearly seeking the Court to  
do, and I think that's evident from the fact that they are  
thanking the Court for having this hearing while they are asking  
for this, they are seeking to go on a fishing expedition, Your  
Honor. And the issues that are before the Court, Your Honor,  
are extremely narrow that they have raised. And that is a claim  
that is nebulous at best from one juror who information was  
obtained from under highly questionable circumstances. Where  
some documentation that was at one time in their hands has  
mysteriously disappeared, okay, been thrown out or whatever they  
say. Okay. So we have this one juror saying no, he is not  
sure, he doesn't know if something was brought in but he thinks  
something was. So the Court is having an inquiry. And we can  
understand the Court wanting to get to the bottom of it, and the  
simple and easy way to do that is to ask each juror did they  
bring anything into the jury room besides what was given to them  
in the Court. If they say no, Your Honor, they are entitled to  
have that answer believed by the Court and we should move on.

If the Court is inclined to ask about these anonymous  
e-mails that mysteriously disappeared, this is the first  
criminal case that I have heard of, certainly the first one I  
have ever been involved in where defense attorneys allegedly got  
anonymous e-mails of jurors mailed to them. But if the Court  
were inclined to pursue that at all it would simply be to ask  
the juror that allegedly generated that e-mail did you or did

22  
you not, and if they say no, Your Honor, their answer should be  
believed by the Court and that should be the end of the  
inquiry. We can see the one question and then the other, Your  
Honor.

There's a real danger, and I know the Court is  
concerned with this, Your Honor -- and I want you to know the  
United States believes that this Court has done an outstanding  
job with a very difficult case -- but we are very concerned  
about what is going to happen today. We weren't concerned about  
the question being asked was extraneous information brought in.  
But the extensive level of questioning that the Court is  
preparing to embark on, and if added to by the questions that  
the defense wants to go into, Your Honor, we are basically -- at  
that point we are on a fishing expedition. The concern is what  
about the next criminal trial and the next criminal trial? Is  
an allegation by defense attorneys or if some friend of the  
Defendant mails them e-mails that they created, is that going to  
generate an inquisition of the jury in every criminal trial that  
we do in the Middle District?

Your Honor, we know the Court is concerned about this,  
and again, we have nothing but respect and admiration for the  
job that the Court has done with a very difficult trial, very  
complicated trial, but we are very concerned about where the  
Court is going right now. We respectfully ask the Court to  
reconsider. And if each juror denies having brought any

23  
extraneous information into that jury room, and if -- should the  
Court want to ask the juror that allegedly generated these  
anonymous e-mails, if they did, that should be the end of the  
inquiry, Your Honor, unless the Court gets a positive response,  
and at that point in time the Court might have follow-up  
questions. Thank you for hearing us, Your Honor.

THE COURT: It's clear if there are objections by the  
United States that the Court is going too far and objections by  
the Defendants that the Court is not going far enough that I  
hopefully am proceeding down the right path. Your objections  
will be noted for the record, but overruled. The question posed  
by Mr. Leach about expanding the time frame from the time they  
received their summons until June 29th, 2006, the information  
that the jurors would have known about this case, researched  
about this case or researched about any Defendant named as a  
party in this case, was clearly covered during the voir dire  
process of this trial, so the Court's inquiry today will  
continue to be limited to that time after they took their oath  
as a juror through their service in this case, which ended on  
June the 29th, 2006.

Depending upon the responses that the Court receives,  
the Court reserves the right to change its mind about  
consulting with counsel before the juror is allowed to be  
excused. Let's take about a five minute recess. We are waiting  
on one witness to come. I was going to take them up in groups

24  
so that I can give these instructions generally instead of  
having to repeat them over and over and over to the witnesses as  
they are called. So let's take about a five minute recess. We  
will reconvene -- let's just say we will reconvene at 9:25.

(At which time, 9:15 a.m., a recess was had until  
9:30 a.m., after which, with five former jurors in the box, the  
hearing continued.)

THE COURT: Good morning, ladies and gentlemen. You  
are here today because you served as a juror in the case of the  
United States of America versus Governor Don Siegelman and  
Mr. Richard Scrushy, case number 05cr-119. I want to begin by  
thanking you for coming today. In the post-trial phase of this  
case certain issues have been raised that have made it necessary  
for me to call you to testify at this hearing. This is a fact-  
finding hearing and the facts about which testimony is given  
will be relevant to this Court's analysis of certain legal  
issues pending before it.

This hearing is not intended to seek information in  
order to punish any juror for anything that has happened during  
this trial. Your truthful and candid testimony at this hearing  
is a necessary part of the administration of our system of  
justice. While I don't want to overwhelm you with all of the  
specifics of the legal issues before this Court, I do want to  
give you some information to help you to understand the focus of  
today's hearing. The purpose of the hearing today is to

1 determine whether any extraneous information was brought to the  
 2 jury's attention by any person, including by any juror, and to  
 3 determine whether any outside influence was improperly brought  
 4 to bear upon any juror. Let me define a couple of those terms  
 5 so that you know what I mean. By extraneous information I am  
 6 referring to any information other than the information that the  
 7 jury received from the following sources: First, the Court's  
 8 instructions on the law; second, the factual evidence presented  
 9 in this case through witness testimony from the witness stand;  
 10 and third, the factual evidence presented in this case through  
 11 exhibits properly admitted at trial.

12 Any information that is not from one of those three  
 13 sources is extraneous information. By outside influence I mean  
 14 attempts to influence a juror's thoughts about the case or the  
 15 outcome of the jury's deliberations by anyone other than another  
 16 juror during the natural deliberative process of the jury  
 17 deliberation in this case.

18 I will be asking you a series of questions intended to  
 19 explore your knowledge, if you have any such knowledge, of  
 20 whether extraneous information was brought to the jury's  
 21 attention or whether any outside influence was improperly  
 22 brought to bear upon any juror. Please limit your responses to  
 23 what you know about extraneous information or outside  
 24 influences. My questions are not intended to cause you to  
 25 testify about statements made during the jury's deliberations

1 other than to the extent that those statements reveal the  
 2 possibility that extraneous information or outside influences  
 3 were brought into that jury room.

4 Additionally, I am not trying to get you to testify  
 5 about the effect of anything upon the actual jury  
 6 deliberations. Nor am I trying to get you to testify about how  
 7 any information discussed by the jurors influenced any juror's  
 8 minds or emotions or caused a juror or jurors to assent or to  
 9 dissent from the jury's verdict.

10 During your testimony I will refer to you and to any  
 11 other juror by your juror number rather than by your name. And  
 12 I ask that you do the same. For your convenience a list of each  
 13 juror and their juror number will be at the witness podium as  
 14 you are called to testify individually. This is intended to  
 15 preserve the privacy of you and your fellow jurors.

16 The Court has taken extraordinary steps today to have  
 17 you be able to come and go from this courthouse, testify in this  
 18 proceeding, and I will be the only person that will question you  
 19 during these proceedings. Please be candid with the Court, and  
 20 I assure you that as I have instructed you my only purpose is to  
 21 determine whether any extraneous information or any outside  
 22 influences were brought to bear in reaching your decision.

23 All of my questions will focus on the same time frame.  
 24 So for each of your answers limit your response to the period of  
 25 time starting from the date on which you took your oath as a

1 juror in this case until the time when the jury's verdict was  
 2 announced in court on June 29, 2006. I am not interested in  
 3 anything relating to the period after the verdict was announced  
 4 and you were released from your jury service.

5 With those instructions in mind, I will now call each  
 6 of you individually, and I will begin by calling Juror Number  
 7 22. If you will follow Melissa, Juror Number 22 will be left to  
 8 be called first. You may not remember your number, but we will  
 9 help you by calling you one at the time. Good morning.

10 THE WITNESS: Good morning.

11 THE COURT: If you will stand and be sworn, please.

12 THE CLERK: Raise your right hand. You do solemnly  
 13 swear or affirm that the testimony you give in this cause to be  
 14 the truth, the whole truth, and nothing but the truth, so help  
 15 you God.

16 THE WITNESS: I do.

17 THE CLERK: You may be seated.

18 **JUROR NUMBER 22**, witness called by the Court,  
 19 having been duly sworn or affirmed, testified as follows:

EXAMINATION

21 BY THE COURT:

22 Q. Good morning.

23 A. Good morning.

24 Q. (completes) I am going to hand you what has been marked as  
 25 Court's Exhibit 1, and I know that that has your name on that

1 exhibit. I have instructed that that exhibit be maintained  
 2 under seal. You will be referred to by your juror number, and  
 3 in this case it is my understanding that you are Juror Number  
 4 22.

5 A. Correct.

6 Q. All right: Juror Number 22, and I apologize for that being  
 7 so impersonal, please forgive me for that reference, but it is  
 8 intended to protect your privacy in this case. Did you receive  
 9 a copy of Court's Exhibit 1 in these proceedings?

10 A. I did.

11 Q. After you were served with a copy of this subpoena for your  
 12 testimony at this hearing today do you have any documents that  
 13 you have brought pursuant to the Court's instructions for you to  
 14 bring documents pursuant to your appearance in court today?

15 A. No, sir.

16 Q. Do you have any such documents?

17 A. No, sir.

18 Q. All right. I am going to ask you a series of questions, and  
 19 if you have any responses to any of the questions that I ask of  
 20 you, if you need to refer to another juror by their name, I have  
 21 provided a list of the jurors' names with their corresponding  
 22 number and I would ask that you merely refer to them as their  
 23 number. I have a list as well and we can make sure that we are

24 clear on who you are referring to without actually identifying  
 25 them by name.

1 A. Okay.  
2 Q. All right. Did anyone other than another juror try to  
3 influence your thinking about this case or your vote on the  
4 substantive counts against any of the Defendants in this case?  
5 A. No, sir.  
6 Q. Do you have any reason to believe that any other juror was  
7 subjected to attempts to influence his or her thinking about  
8 this case?  
9 A. No, sir.  
10 Q. Did anyone other than another juror attempt to discuss the  
11 case with you during the time you were a juror in this case?  
12 A. No, sir.  
13 Q. During the time that you were serving as a juror did you  
14 view or hear any reports from any news source or other  
15 information relating to this case, or -- relating to this case  
16 or any Defendant from sources such as newspapers, magazines,  
17 radio or television broadcasts or Internet sites?  
18 A. I didn't view any or listen, but, you know, when you are  
19 home and the TV is on, my husband always tried to mute it or I  
20 tried to mute it out, but no, not just sit there and listen.  
21 Q. When you were inadvertently exposed to any such reports  
22 during the course of this trial -- and the Court is aware this  
23 took place over more than a two month period of time -- did you  
24 listen to any of the content or read any of the substance of any  
25 reports that you may have been inadvertently exposed to?

1 A. No, sir.  
2 Q. During the time that you were serving as a juror did you  
3 view or hear any material from any books, newspapers, Internet  
4 sites or any other source relating to any witness, any legal  
5 issue or any factual issue related to this case?  
6 A. No, sir.  
7 Q. During the time that you were serving as a juror did you in  
8 any way attempt to independently investigate any facts or law  
9 relating to this case?  
10 A. No, sir.  
11 Q. During the time that you were serving as a juror did you  
12 overhear any conversations between persons not on the jury or  
13 between non-jurors and any member of the jury relating to this  
14 case?  
15 A. Say that again, please?  
16 Q. I will. During the time that you were serving as a juror  
17 did you overhear any conversations between persons who were not  
18 on the jury or between non-jurors and any member of the jury  
19 relating to this case? I am not talking about friendly  
20 conversation in the hallway.  
21 A. No, sir. No.  
22 Q. During the time that you were serving as a juror did you  
23 view or hear any extraneous information about the penalty that  
24 might be applicable to any Defendant if he was convicted of the  
25 charges in this case?

29  
1 A. No, sir.  
2 Q. During the time that you were serving as a juror did you  
3 obtain extraneous information from any source about your role as  
4 a juror, jury service generally, or about the role or the  
5 function of the foreperson?  
6 A. I didn't receive any, but I -- the foreperson said that they  
7 did some information to see what their role was, and that was  
8 explained to us, but that's -- I didn't do any investigation at  
9 all.  
10 Q. All right. Then let me ask you about that. You said that  
11 the foreperson indicated that they had done some independent  
12 investigation about their role as the foreperson, and that would  
13 be Juror Number Seven?  
14 A. Yes, sir.  
15 Q. All right. Did anyone else say that they had done any  
16 outside investigation about their role either as a juror or the  
17 role of the foreperson?  
18 A. No, sir.  
19 Q. What did the foreperson, Juror Number Seven, tell you that  
20 he had done?  
21 A. He just said he looked up on the Internet as to what a  
22 foreperson's function is and what they should be -- what is  
23 required of them, and that was it.  
24 Q. When did this take place?  
25 A. This took place after we elected him as foreman, and maybe

30  
1 came back the next day and said, you know, I did look up to see  
2 what my job is and what my role is. But he didn't bring us  
3 anything to view or anything like that.  
4 Q. What discussions did you have about what research that he  
5 had done?  
6 A. We didn't really discuss it. He just said he looked up on  
7 the Internet as to what his job was and that's it.  
8 Q. Did anyone question him about what his job was outside of  
9 what the Court had instructed him to do?  
10 A. No, sir.  
11 Q. Did he volunteer what his job was outside of the Court's  
12 instructions to the jury?  
13 A. Well, I mean, like I said, he just said I looked up to see  
14 what my job was, what is my role. And we had our books open,  
15 you know, and that was all. He said I looked to see what I was  
16 supposed to do.  
17 Q. And that brings me to another point, and I don't want to  
18 leave these two points. One is the comments by the foreperson  
19 and the other is the book that you had. Is the book that you  
20 are referring to the book that the Court provided to you?  
21 A. That the Court, yes, sir.  
22 Q. All right. So any book that you had in the jury room during  
23 your deliberations, did any of you to your knowledge have any  
24 books or materials within that notebook that was not provided by  
25 the Court?

1 A. Not to my knowledge.  
 2 Q. Back to the foreperson's discussions, can you recall as best  
 3 that you can exactly what the foreperson said after he was  
 4 elected foreperson and after he had announced that he had done  
 5 research about his role as a foreperson?  
 6 A. After we elected him, you know, that was that day, it was  
 7 the next day he came back to say he looked up some information  
 8 to see what it was that he was supposed to do as a foreman.  
 9 This was -- yes.  
 10 Q. Did he show you anything that he had looked up?  
 11 A. No, sir.  
 12 Q. Did he tell you about anything that he had looked up?  
 13 A. No.  
 14 Q. Did anyone question him about anything that he had looked  
 15 up?  
 16 A. No, sir. Not to -- no.  
 17 Q. During the time that you were serving as a juror did any  
 18 other juror say or do anything that caused you to believe that  
 19 he or she had been exposed to extraneous information about this  
 20 case from any source other than what you just told me about the  
 21 foreperson?  
 22 A. No, sir.  
 23 Q. During the time that you were serving as a juror did you  
 24 view or hear any extraneous information about either the law  
 25 applicable to the case or any factual material relating to this

1 case?  
 2 A. No, sir.  
 3 Q. Did you bring any documents -- and I have already asked you  
 4 this -- but you brought no documents pursuant to the subpoena  
 5 that you were served?  
 6 A. No, sir.  
 7 Q. That's all the questions I have of you. You may step down  
 8 and you are free to go.  
 9 THE COURT: Juror Number 38.  
 10 THE CLERK: If you would raise your right hand. You do  
 11 solemnly swear or affirm that the testimony you give in this  
 12 cause to be the truth, the whole truth, and nothing but the  
 13 truth, so help you God?  
 14 THE WITNESS: I do.  
 15 THE CLERK: You may be seated.  
 16 JUROR NUMBER 38, witness called by the Court,  
 17 having been duly sworn or affirmed, testified as follows:  
 18 EXAMINATION  
 19 BY THE COURT:  
 20 Q. Good morning. Let me start off by again thanking you for  
 21 your appearance today. I have handed you what has been marked  
 22 as Court's Exhibit 2, and I believe you have already seen a copy  
 23 of that or that is the original that was presented to you before  
 24 today's date.  
 25 A. Yes, sir.

1 Q. And as I described for you in general terms, I am going to  
 2 be referring to you by your juror number, and for the record you  
 3 are Juror Number 38; is that right? If you need to review the  
 4 list in front of you to make sure that that is your juror number  
 5 corresponding with your name.  
 6 A. Yes, sir.  
 7 Q. I don't mean to be impersonal but I will be referring to you  
 8 as Juror Number 38 for your privacy.  
 9 A. Yes, sir.  
 10 Q. I am going to ask you a series of questions and I would  
 11 again reiterate, I am not here to intimidate you or to harass  
 12 you in any way, I just merely want to know what you know about  
 13 the scope of what the Court has described for you, the purpose  
 14 of the hearing today. And if you have any responses just be as  
 15 candid with the Court as you possibly can and I will follow up  
 16 with you about those responses that you have any information  
 17 about. First of all, in your receipt of Court's Exhibit Number  
 18 2 it requires that you bring with you any documents that are  
 19 described, and they go through subsections A through G about any  
 20 documents relating to information that you may have received in  
 21 this case. Did you review that subpoena?  
 22 A. Yes, sir, I did.  
 23 Q. Do you have any documents that you have --  
 24 A. No, sir.  
 25 Q. -- been exposed to or have possession of or were aware of

1 that you have with you here today?  
 2 A. No, sir.  
 3 Q. I am going to ask you a series of questions, and again,  
 4 answer them as candidly as you possibly can. My first question,  
 5 did anyone other than another juror try to influence your  
 6 thinking about this case or your vote on the substantive counts  
 7 against any Defendant?  
 8 A. No, sir.  
 9 Q. Do you have any reason to believe that any other juror was  
 10 subjected to attempts to influence his or her thinking about the  
 11 case by anyone other than another juror --  
 12 A. Not to my knowledge.  
 13 Q. -- during the normal deliberative process?  
 14 A. No, sir.  
 15 Q. Did anyone other than another juror attempt to discuss the  
 16 case with you during the time that you were a juror in this  
 17 case?  
 18 A. No, sir.  
 19 Q. During the time that you were serving as a juror did you  
 20 view or did you hear any news reports or other information  
 21 relating to this case or any Defendant from sources such as  
 22 newspapers, magazines, radio or television broadcasts or any  
 23 Internet sites?  
 24 A. No, sir.  
 25 Q. Intentionally or unintentionally?

- 1 A. No, sir.
- 2 Q. During the time that you were serving as a juror did you
- 3 view or did you hear any material from any books, newspapers,
- 4 Internet sites or any other sources relating to any witness, any
- 5 legal issue, or any factual issue relating to this case?
- 6 A. No, sir.
- 7 Q. During the time that you were serving as a juror did you in
- 8 any way attempt to independently investigate any facts or law
- 9 relating to this case?
- 10 A. No, sir.
- 11 Q. During the time that you were serving as a juror did you
- 12 overhear any conversations between any persons not on the jury
- 13 or between non-jurors and any member of the jury relating to
- 14 this case?
- 15 A. No, sir.
- 16 Q. During the time that you were serving as a juror did you
- 17 view or did you hear any extraneous information about the
- 18 penalty that might be applicable to any Defendant if he was
- 19 convicted of the charges in this case?
- 20 A. No, sir.
- 21 Q. During the time that you were serving as a juror did you
- 22 obtain any extraneous information from any source about your
- 23 role as a juror, jury service in general, or the role of the
- 24 foreperson?
- 25 A. No, sir.

- 1 Q. During the time that you were serving as a juror did any
- 2 other juror say or do anything that caused you to believe that
- 3 he or she had been exposed to extraneous information about this
- 4 case from any source?
- 5 A. Yes, sir.
- 6 Q. Tell me what you know about that.
- 7 A. There was one of the jurors said that they had been on the
- 8 Internet and -- well, it was like one of the TV stations had all
- 9 the proceedings was on the Internet, you could go read it, and
- 10 that was mentioned. And that's the only thing that I know of
- 11 that they had read what was going on in the court. I mean it
- 12 wasn't anything else besides what had happened here.
- 13 Q. And let me ask if you would refer to the person who may
- 14 have discussed that with the jury in your presence by their
- 15 juror number. And they are listed for you. And if you would
- 16 identify who it was that indicated that they had looked at any
- 17 news sites, any Internet sites or any other reports about this
- 18 case.
- 19 A. Juror Number Seven.
- 20 Q. Juror Number Seven. And that's the foreman of the jury.
- 21 A. Yes, sir.
- 22 Q. Or the foreperson of the jury.
- 23 A. Yes, sir.
- 24 Q. Can you tell me what he said to you about what information
- 25 that he had been exposed to?

- 1 A. Well, you had given us a pamphlet or gave the foreman a
- 2 pamphlet explaining the different laws and stuff, and it was
- 3 brought up one day --
- 4 Q. Was that part of the Court's instructions to the jury?
- 5 A. Yes, sir. It was brought up one day that one of the jurors
- 6 had -- well, we'd each like to have one of those, you know. And
- 7 he made the statement, said well, you can go on the Internet and
- 8 get it. Said all this stuff is on the Internet. And it was
- 9 brought up to him then well, why are you looking on the
- 10 Internet. He said well, there's nothing on there that we are
- 11 not hearing right here anyway. And then later on he came to you
- 12 and had those copies run off so each one of us would have one.
- 13 Q. Did he explain or did he make any statement that indicated
- 14 that he had researched any information about this case?
- 15 A. No, sir. I mean as far as what depth he went into it, that
- 16 I can't say, sir.
- 17 Q. Did he discuss that with the jury --
- 18 A. No.
- 19 Q. -- about what depth he went into?
- 20 A. No, not to my knowledge.
- 21 Q. And all of you were there together when you were
- 22 deliberating, were you not?
- 23 A. Yes, sir.
- 24 Q. And Juror Number 38, when you were there together and Juror
- 25 Number Seven indicated that he had looked on the Internet, did

- 1 he indicate what he had looked at?
- 2 A. He didn't bring up specific details, no, sir.
- 3 Q. Did he bring any documents from any outside source into the
- 4 jury room?
- 5 A. Not that I know of.
- 6 Q. Did he ever show anyone any documents that were brought into
- 7 the jury room in your presence?
- 8 A. No, sir.
- 9 Q. Did he ever discuss any documents that were brought into the
- 10 jury room -- did he or anyone else ever discuss any documents
- 11 that were brought into the jury room outside of what the Court
- 12 gave you to use during your deliberations?
- 13 A. No, sir.
- 14 Q. And in saying that he didn't discuss with you what he had
- 15 looked at, did anyone else contribute to that conversation by
- 16 saying I have also looked at information on the Internet or I
- 17 have also read articles in the paper or seen television or radio
- 18 broadcasts about this case?
- 19 A. No, sir.
- 20 Q. Is the only person that you are aware of that has discussed
- 21 looking at information outside of what the Court provided you
- 22 Juror Number Seven?
- 23 A. Yes, sir. That's the only one that I am aware of.
- 24 Q. And you are saying that he did not describe specifically
- 25 what it was that he had looked at?

1 A. No, sir.  
2 Q. During the time that you were serving as a juror did you  
3 view or did you hear any extraneous information about either the  
4 law applicable to this case or to any factual material relating  
5 to this case?  
6 A. Not outside of what you gave us, sir.  
7 Q. Thank you very much Juror Number 38. You may step down and  
8 you are excused.  
9 A. Do I keep these or leave these here?  
10 Q. If you would give the Court's Exhibit 2 to the court  
11 reporter or to my courtroom deputy and leave the list of jurors  
12 there. Thank you, sir.

13 THE COURT: Juror Number 66 if she is here would be  
14 next. Is she here?

15 THE MARSHAL: Yes, sir.

16 THE COURT: Let's bring her in.

17 THE CLERK: Raise your right hand. You do solemnly  
18 swear or affirm that the testimony you give in this cause to be  
19 the truth, the whole truth, and nothing but the truth, so help  
20 you God.

21 THE WITNESS: I do.

22 THE CLERK: You may be seated.

23 **JUROR NUMBER 66**, witness called by the Court,  
24 having been duly sworn or affirmed, testified as follows:  
25

1 EXAMINATION

2 BY THE COURT:

3 Q. Good morning, ma'am, how are you doing?

4 A. Good morning. I am fine.

5 Q. Ma'am, I am going to refer to you by your juror number, and  
6 in front of you you will see the list of the 12 jurors in this  
7 case with the corresponding juror number. And you were not here  
8 when I gave some general instructions to the five other jurors  
9 who came in before you, or the witnesses that the Court has  
10 called, and I am going to give you the instructions that I gave  
11 them about why you are here today first.

12 First of all I am going to refer to you by your juror  
13 number for your personal identity and your protection of your  
14 identity, and assure you that I would expect that you would  
15 refer to any other juror who may have -- whose responses to  
16 questions I ask you may reveal their names by giving me their  
17 juror numbers. And if you don't recall their numbers, certainly  
18 their names are in front of you and if you would refer to that  
19 list.

20 You are here today because you served as a juror in the  
21 case of the United States of America versus Governor Siegelman  
22 and Mr. Scruschy, case number 05cr-119. I want to thank you for  
23 coming today. I understand you had to leave your son's school  
24 to get here today and I appreciate you coming and being with  
25 us. I don't expect this to take a long time, but this is

1 certainly an important procedure and a proceeding in this case.  
2 In the post-trial phase of this case certain issues  
3 have been raised that have made it necessary for me to call you  
4 to testify as a witness during this hearing. This is a fact-  
5 finding hearing, and the facts about which testimony is given  
6 will be relevant to this Court's analysis of certain legal  
7 issues pending before the Court. This hearing is not intended  
8 to seek any information in order to punish any juror for  
9 anything that has happened during this trial. Your truthful and  
10 candid testimony at this hearing is a necessary part of the  
11 administration of our justice system.

12 While I don't want to overwhelm you with all of the  
13 specifics of the legal issues before this Court I do want to  
14 give you some information to help you understand the focus of  
15 the hearing today. The purpose of today's hearing is to  
16 determine whether any extraneous information was brought to the  
17 jury's attention by any person, including by any juror, and  
18 determine whether any outside influence was improperly brought  
19 to bear upon any juror. Let me explain what I mean by  
20 extraneous information and outside influence.

21 Extraneous information is any information other than  
22 the information the jury received from the following sources:  
23 First, the Court's instructions on the law; second, the factual  
24 evidence presented in the case through the witnesses' testimony  
25 in the chair that you sit; and third, the factual evidence

1 presented in the case through the exhibits admitted as exhibits  
2 during this trial. Any information that is not in one of those  
3 three sources is extraneous information. By outside influence I  
4 mean attempts to influence a juror's thoughts about this case or  
5 the outcome of the jury's deliberations by anyone other than  
6 another juror.

7 I will be asking you a series of questions intended to  
8 explore your knowledge, if you have any knowledge, of whether  
9 extraneous information was brought to the jury's attention or  
10 whether any outside influence was improperly brought to bear  
11 upon any juror. Please limit your responses to what you know  
12 about extraneous information or outside influences as I have  
13 described for you. My questions are not intended to cause you  
14 to testify about statements made during the jury's deliberations  
15 other than to the extent that those statements reveal possible  
16 extraneous information or outside influences. Additionally, I  
17 am not trying to get you to testify about the effect of anything  
18 upon the actual jury deliberations, nor am I trying to get you  
19 to testify about how any information discussed by the jurors  
20 influenced any juror's mind or emotions or caused a juror or  
21 jurors to assent or dissent from the verdict that was reached.

22 During your testimony I will refer to you as I have  
23 said by your juror number, and I would ask that for your  
24 convenience and for the protection of the identity of the other  
25 jurors that you look at the list that is in front of you and

1 refer to any other of the witnesses that may have served as  
2 jurors in this case by their juror number if you have any  
3 response that would involve them by name. This is intended to  
4 preserve the privacy of you and your fellow jurors in this  
5 case.

6 All of my questions will focus on the same time frame.  
7 So for each of your answers limit your responses to the period  
8 of time starting from the date on which you took your oath as a  
9 juror after you were selected for jury service until the time  
10 when the jury's verdict was announced in court on June the 29th,  
11 2006. I am not interested in anything relating to the period  
12 after the verdict was announced and you were released from your  
13 service as a juror in this case.

14 With those instructions in mind I am going to ask you a  
15 series of ten or 11 questions. First I would like for you to  
16 look at what has been marked as Court's Exhibit 3. I believe  
17 that is the original of a subpoena that was served upon you, and  
18 do you recall seeing that subpoena before today's date?

19 A. Yes.

20 Q. That subpoena requires that you bring with you certain  
21 documents that are described in that subpoena in subparagraphs  
22 one, two, three, and 3-A through 3-G. Did you review those  
23 requests by the Court to bring documents with you?

24 A. I didn't.

25 Q. You didn't review it or did you not have any documents?

1 A. I didn't because the box wasn't checked on mine to bring  
2 those, so I didn't.

3 Q. All right. Let me ask if you read that before today's date?

4 A. I read it.

5 Q. Do you have any of the documents that are described in the  
6 subpoena in the block that is not checked?

7 A. No.

8 Q. All right. Let me say to you that if that block is not  
9 checked on your subpoena that is an administrative oversight by  
10 this Court. And I want to make clear for the record, first of  
11 all, if you have in your possession any of those documents  
12 described in that section of the subpoena that was not checked?

13 A. Do I have -- I don't have any of these things.

14 Q. You don't have any of those documents that the Court asked  
15 that you bring, even if the block were checked on that subpoena?

16 A. I don't -- I see the exhibits admitted into evidence or  
17 anything like that, I don't.

18 Q. The request says do you have in your possession certain  
19 documents other than the exhibits admitted into evidence,  
20 testimony of the witnesses or the Judge's instructions, and if  
21 you do have anything other than those please bring any documents  
22 or objects with you which relate to the information considered,  
23 consulted, viewed or discussed. For example, if you have  
24 knowledge that any juror, including yourself, may have  
25 considered, consulted, viewed or discussed any of the following

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1 information during the trial or jury deliberations you should  
2 bring all documents or objects related to that information. A,  
3 outside information relating to the facts of this case. Do you  
4 have any such documents --

5 A. No.

6 Q. -- about any outside information relating to the facts of  
7 this case?

8 A. (Witness shakes head in the negative.)

9 Q. Do you have any documents which relate to outside  
10 information relating to or concerning any Defendant or witness  
11 in this case?

12 A. (Witness shakes head to the negative.)

13 Q. You need to answer verbally.

14 A. No.

15 Q. Do you have any documents relating to outside information  
16 relating to the law applicable to any aspect of the case?

17 A. No.

18 Q. Do you have any documents relating to outside information  
19 relating to the possible penalty any Defendant might face if  
20 they were convicted?

21 A. No.

22 Q. Do you have any information relating to outside information  
23 related to any media coverage of this trial?

24 A. Does the same thing labeled the media coverage means did I  
25 look at anything on the Internet or --

47

46

1 Q. During the time that you served as a juror did you have  
2 any -- did you review any media --

3 A. No.

4 Q. -- coverage of this case?

5 A. No.

6 Q. And those would be part of the questions I will ask you. I  
7 am asking you first if you have any documents relating to that?

8 A. No.

9 Q. And I skipped over one of them, do you have any information  
10 relating to outside information relating to the process of jury  
11 deliberations, the role of you as a juror or the role of the  
12 foreperson of the jury?

13 A. No.

14 Q. Do you have any outside information relating to or  
15 concerning any aspect of the law or the legal procedures in this  
16 case?

17 A. No.

18 Q. Do you have any outside information other than what the  
19 Court admitted into evidence as exhibits, the Court's  
20 instructions to you on the law, and the testimony that you heard  
21 in this case that you have in your possession that you viewed or  
22 brought to the attention of any of the other jurors in this case  
23 during your service as a juror?

24 A. No.

25 Q. All right. Then that covers that. Thank you very much.

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1 And if you would, listen to the questions that I have to ask you  
2 as follow-up questions.

3 THE CLERK: Judge, she he needs to speak into the  
4 microphone.

5 Q. Speak into the microphone so that we can hear you if you  
6 would, please, Juror Number 66. Did anyone other than another  
7 juror try to influence your thinking about this case or your  
8 vote on the substantive counts against any Defendant?

9 A. No.

10 Q. Do you have any reason to believe that any other juror was  
11 subjected to attempts to influence his or her thinking about the  
12 case by anyone other than another juror?

13 A. No.

14 Q. Did anyone other than another juror attempt to discuss the  
15 case with you during the time you were a juror in this case?

16 A. No.

17 Q. During the time that you were serving as a juror did you  
18 view or did you hear any news reports or other information  
19 relating to this case or any Defendant from sources such as  
20 newspapers, magazines, radio or television broadcasts or any  
21 Internet site?

22 A. No.

23 Q. During the time that you were serving as a juror did you  
24 view or did you hear any material from any books, newspapers,  
25 Internet sites or any other source relating to any witness, any

1 legal issue or any factual issue related to this case?

2 A. No.

3 Q. During the time that you were serving as a juror did you in  
4 any way attempt to independently investigate any facts or law  
5 relating to this case?

6 A. No.

7 Q. During the time that you were serving as a juror did you  
8 overhear any conversations between persons not on the jury or  
9 between non-jurors and any member of the jury relating to this  
10 case?

11 A. No.

12 Q. During the time that you were serving as a juror did you  
13 view or did you hear any extraneous information about the  
14 penalty that might be applicable to any Defendant if he was  
15 convicted of the charges in this case?

16 A. No.

17 Q. During the time that you were serving as a juror did you  
18 obtain extraneous information from any source about your role as  
19 a juror, jury service generally, or the role of the foreperson?

20 A. No.

21 Q. During the time that you were serving as a juror did  
22 other -- did any other juror say or do anything that caused you  
23 to believe that he or she had been exposed to extraneous  
24 information about this case from any source?

25 A. Yes.

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1 Q. Tell me what that was.

2 A. It was talked about information they saw on the Internet.

3 Q. Okay.

4 A. About --

5 Q. Let me first ask you to speak into the microphone so that we  
6 can all hear you.

7 A. Okay.

8 Q. Who was it by their juror number indicated that they had  
9 been exposed to any information from any source, to include the  
10 Internet?

11 A. Number Seven, Number 40.

12 Q. Number Seven and Number 40. All right. I am going to ask  
13 you about each of them individually and I will start with Number  
14 Seven. It's my understanding that Juror Number Seven was the  
15 foreperson.

16 A. Uh-huh. (positive response)

17 Q. Tell me all of what you can recall that he said regarding  
18 any independent investigation that he had done outside of the  
19 Court's instructions, the evidence and the exhibits admitted  
20 into the trial of this case.

21 A. Okay. He said first of all he looked up the role of the  
22 foreman on the jury and just other information as related to the  
23 process of -- and I guess he may have copied -- gotten one of  
24 the indictments. He downloaded that and went through that and  
25 looked at each one of the cases while he was at home -- each one

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1 of the charges while he was at home and when he came back he  
2 brought just detailed information about how we should consider  
3 each one of the charges and what they were saying.

4 Q. All right. So he researched his role as a foreperson.

5 A. Uh-huh. (positive response)

6 Q. And he downloaded information about the indictment?

7 A. Uh-huh. (positive response)

8 Q. Anything else that you are aware of that he discussed with  
9 the jury in your presence?

10 A. He did -- he looked up information on another one of the  
11 Defendants.

12 Q. He looked up information about what?

13 A. On another Defendant, on one that's not here today. He  
14 looked up to see what -- how long he had been with his employer  
15 and what he had to --

16 Q. One of the Defendants that were found not guilty?

17 A. Yes.

18 Q. What other information did he tell you he had looked at?

19 A. I think that's all.

20 Q. Did he bring any documents -- did Juror Number Seven bring  
21 any documents into the jury room about what information that he  
22 had looked up about his role as a foreperson?

23 A. I don't know what all he had but he did bring in documents  
24 but it was something that he was reading off to us that he  
25 brought in. He didn't actually share -- we didn't see the hard

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1 copy but he did bring it in.  
 2 Q. Did anyone in your presence ask to see what he had gotten  
 3 from the Internet?  
 4 A. Not that I know of.  
 5 Q. Did he show that to anyone in the jury room?  
 6 A. Not that I know of.  
 7 Q. Or on the jury?  
 8 A. Not that I know of.  
 9 Q. You said he looked up information about the indictment and  
 10 how you were to consider the counts in the indictment.  
 11 A. Yes.  
 12 Q. He was provided with, and I believe you were also provided  
 13 with a copy of the Court's instructions to the jury about this  
 14 case.  
 15 A. Yes.  
 16 Q. Was the information that he was referring to different from  
 17 what the Court had instructed you about the charges in this  
 18 case?  
 19 A. No. I mean it was one of the copies of the indictment but  
 20 he -- he went through and analyzed each one of the charges.  
 21 Q. Was that based on information that he had received through  
 22 his own research or through what the Court had provided you or  
 23 do you know?  
 24 A. Maybe it's his own research because it wasn't done in the  
 25 deliberation room, it was done at home and he brought it back.

1 Q. Did he show any of you that information about the content of  
 2 the indictment?  
 3 A. He didn't actually show it to us, he just read from it, what  
 4 he had.  
 5 Q. He just read from it.  
 6 A. From his indictment.  
 7 Q. And what was it that he asked you or that he shared with you  
 8 about the information contained in the indictment?  
 9 A. Just basically he went through each one of the charges and  
 10 each one of the schemes so this -- he said he went through each  
 11 one of them to I guess break it down so we could understand each  
 12 one of the charges, and this is what -- in order to find them  
 13 guilty this has to be done and this is the way it was done. And  
 14 this is basically how it was done. Because, you know, he had  
 15 taken time that night and looked over the stuff and this is how  
 16 it was done. This is what he remembered from taking his notes  
 17 and he just basically plugged his notes in, what he thought was  
 18 the evidence.  
 19 Q. When you say his notes are you referring to the notes that  
 20 he took during the trial that the Court allowed you all to take?  
 21 A. Right.  
 22 Q. And you say he had those notes available in the jury  
 23 deliberation room?  
 24 A. Right.  
 25 Q. And you say that he had other information that you believe

1 that he got from the Internet --  
 2 A. Yes.  
 3 Q. -- about the indictment?  
 4 A. Yes.  
 5 Q. Now, the jury deliberated in this case if my memory serves  
 6 me right for about nine days. Is my recollection consistent  
 7 with yours?  
 8 A. I think so.  
 9 Q. Do you recall how much time that Juror Number Seven spent  
 10 talking with you about, first of all, the information that he  
 11 had researched about his role as the foreperson?  
 12 A. I can't really say. It may have been after the first time  
 13 we said it was a hung jury and then he, I guess maybe that night  
 14 came back and said okay, this is what I have done, I have looked  
 15 at this and this is the way that we need to try to look at it as  
 16 far as doing it like this way. So I don't know, he may have did  
 17 maybe an hour or two that morning or something, I am not sure  
 18 how much time.  
 19 Q. And was that about his role as a foreperson or about the  
 20 charges in the indictment or both?  
 21 A. Both. Once he did the information about being the foreman  
 22 he came back and said I looked up to see what a foreman supposed  
 23 to do and I want to give everybody a fair chance to voice their  
 24 opinion or whatever about the evidence. And he did that I want  
 25 to say maybe that second full day that we was in there.

1 Q. The second full day of your -- after you started your  
 2 service?  
 3 A. Right. Once we started during that --  
 4 Q. The next day?  
 5 A. So the next day he came in and said this is the role of the  
 6 foreman, this is what a foreperson does.  
 7 Q. Did anyone see anything that he brought in to the jury, to  
 8 your knowledge?  
 9 A. Did we personally look at it? No. But did we see him take  
 10 stuff, you know, out of his -- that he had in his hand or in his  
 11 jacket or something, yes.  
 12 Q. And how much time did he spend discussing that with you?  
 13 A. About the foreman, the role of the foreman?  
 14 Q. Yes.  
 15 A. I don't know, maybe ten minutes.  
 16 Q. Okay. I will ask you the same series of questions about  
 17 what he may have brought in or how much time he spent discussing  
 18 with you information about the counts in the indictment that he  
 19 researched from sources independent from what the Court has  
 20 explained to you does not cover extraneous information.  
 21 A. How much time he spent on each one?  
 22 Q. How much time did he spend talking with you about how much  
 23 research he had done about the counts in the indictment?  
 24 A. I don't know if he gave us an -- exact how much time he  
 25 spent researching it.

1 Q. No, no, I don't want to know how much time he spent  
2 researching it, what I want to know is how much time did he  
3 spend with the jury talking with you about what research he had  
4 done or what information he had received outside of what the  
5 Court gave you as the evidence and the law to consider in this  
6 case?

7 A. I don't know if I can break down and say exactly how much  
8 time because when we went through each one of them it was always  
9 okay, well, but when you look here this says this and it's not  
10 in the book that you gave us, it's not in the indictment so --  
11 and he had his paperwork there, so each one of the charges there  
12 was information about it. So it was never okay, we are going to  
13 discuss this one charge or discuss all of the research I have  
14 done, it was each one of the charges as we went through it.

15 Q. And you went through it charge by charge?

16 A. By charge.

17 Q. Did you see any of the information that he brought in about  
18 the charges?

19 A. I didn't.

20 Q. And he just discussed it as you went through it?

21 A. Like I said, he didn't read it, you know, I mean, but you  
22 can -- he took it out of his jacket or whatever or something so  
23 he had it and he was reading from it.

24 Q. Okay. You said he had information about independent  
25 research he had done about co-Defendants --

1 A. Uh-huh. (positive response)

2 Q. -- that were acquitted in this case.

3 A. Yes.

4 Q. How much time did he spend discussing that information with  
5 the members of the jury?

6 A. That may have been ten or 15 minutes on that, on the --

7 Q. Ten or 15 minutes --

8 A. Uh-huh. (positive response)

9 Q. -- on each Defendant that was acquitted?

10 A. Yeah.

11 Q. Again, did you see any of the information that he may have  
12 looked at from sources outside of what the Court gave you to  
13 look at in making your decision?

14 A. I didn't see it.

15 Q. Okay. Was there anything else that you are aware of that  
16 the foreman, Juror Number Seven, looked at, consulted with or  
17 brought into the jury room during the deliberative process of  
18 this jury?

19 A. No.

20 Q. Let's then go now to Juror Number 40. You said that she  
21 also indicated that she had been exposed to information from the  
22 Internet.

23 A. Uh-huh. (positive response)

24 Q. Tell me what it is that you are aware of that she was  
25 exposed to and discussed with the other members of the jury.

1 A. Okay. Again, she told us that she went to the Web site,  
2 it's the District Court Web site, and downloaded a copy of the  
3 indictment. And she too did the same thing, she went through  
4 and read the indictment and highlighted some points on it and I  
5 guess like took her notes on it, put her evidence, plugged her  
6 evidence into the different charges and different indictments.

7 Q. Do you know what it was about each count in the indictment  
8 that she researched?

9 A. Do I know? No.

10 Q. Did she ever show you any information that she had gotten  
11 from the Internet or from any source outside of what the Court  
12 has explained would be proper evidence to be considered?

13 A. She didn't show us anything. She did say that while she was  
14 on that Web site and she saw another Internet article about the  
15 trial, and that --

16 Q. Did she discuss what was in that article or that news  
17 report?

18 A. She said something about it but I am not certain.

19 Q. Do you know how much time she spent discussing what she had  
20 read that was contained in the news article, first of all?

21 A. I don't think it was discussed about it, but she said she  
22 did read something about it. And I don't know which news  
23 article it was but she just made a comment about the writer and  
24 the Defendants or whatever.

25 Q. Did she share any of the content of that article with the

1 other members of the jury, to include you?

2 A. Other than just making a statement about what she read.

3 Q. And how much time would you anticipate or estimate that that  
4 took?

5 A. Maybe five minutes, it wasn't a whole lot spent on it.

6 Q. All right. You said that she also had apparently looked at  
7 the charges from the indictment that was on the Court's Web site  
8 and done some independent investigation or research into the  
9 counts contained in the Court's indictment that was posted on  
10 the Web site?

11 A. Exactly.

12 Q. How do you know that?

13 A. She told us.

14 Q. I mean how do you know that she had looked at the indictment  
15 that was on the Web site? Because the Court provided you with a  
16 copy of the indictment to look at your during your  
17 deliberations, you are aware of that.

18 A. Uh-huh. (positive response)

19 Q. Was the copy of the indictment that she was referring to  
20 different from the indictment that the Court had provided to the  
21 jury?

22 A. Well, it was over the weekend and she said she had did it  
23 over the weekend and she had analyzed each one of the charges,  
24 and I know she didn't take it from here. I don't know if we had  
25 already had a copy about that time, but it was over the weekend,

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1 and when she came back and just said well, you know, I looked at  
2 the indictment. It was ~~sure~~, how did you look at it? It was  
3 here. She said it was on the Web site.  
4 Q. All right. And you said that she apparently had taken some  
5 notes on each count in the indictment?  
6 A. Uh-huh. (positive response)  
7 Q. Did she ever show you or anyone in your presence those notes  
8 that she had taken?  
9 A. She didn't.  
10 Q. How much time did she discuss having researched information  
11 either about the indictment or the counts in the indictment  
12 after that weekend that you have described?  
13 A. That may have been about 15 or 20 minutes, she was telling  
14 us about it.  
15 Q. Is there anything else that you are aware of that Juror  
16 Number 40 researched either on the Internet or looked at on  
17 either television or any print media or listened to in any  
18 television or radio broadcasts about this trial during the trial  
19 that she brought into the jury room and discussed with the jury?  
20 A. No.  
21 Q. Did anyone else while you were serving as a juror do or say  
22 anything that caused you to believe that he or she had been  
23 exposed to extraneous information about this case from any  
24 source other than Juror Number 40 and Juror Number Seven?  
25 A. No.

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1 Q. During the time that you were serving as a juror did you  
2 view or hear any extraneous information about either the law  
3 applicable to this case or any factual material relating to this  
4 case?  
5 A. No.  
6 Q. Thank you, ma'am. Juror Number 66, you may step down and  
7 you are excused.  
8 MR. McDONALD: Your Honor, may we have a side bar?  
9 THE COURT: No. Number Eight.  
10 THE CLERK: Raise your right hand. You do solemnly  
11 swear or affirm that the testimony you give in this cause to be  
12 the truth, the whole truth, and nothing but the truth, so help  
13 you God.  
14 THE WITNESS: I do.  
15 **JUROR NUMBER EIGHT**, witness called by the Court,  
16 having been duly sworn or affirmed, testified as follows:  
17 EXAMINATION  
18 BY THE COURT:  
19 Q. Good morning, sir. Again, I appreciate you being here. If  
20 you would when you respond to the Court if you would speak up  
21 audibly so that we can hear you and make sure that we make a  
22 record to be preserved in this case. For the record you are  
23 Juror Number Eight in the case of United States of America  
24 versus Governor Siegelman and Mr. Scrushy.  
25 A. I am.

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1 Q. And for your convenience I have provided for you a list of  
2 the jurors by name and their corresponding juror number and if  
3 at any time you have any information that you need to relay to  
4 the Court about any question that I ask you that would require  
5 that you divulge them by name if you would refer to them by  
6 juror number. I also have the juror number list in front of  
7 me.  
8 A. Okay.  
9 Q. Let me ask you first to look at Court's Exhibit Number 4  
10 which is on the little ledge between you and I.  
11 A. Okay.  
12 Q. Do you recognize that document?  
13 A. Yes.  
14 Q. And that is a subpoena that was served upon you to attend  
15 this hearing today and it requested that you bring with you  
16 certain documents that are identified in that subpoena. Do you  
17 recognize that?  
18 A. Yes, I do.  
19 Q. Let me start off by asking you first of all do you have any  
20 documents that are covered in that subpoena request?  
21 A. No, I do not.  
22 Q. I am going to ask you a series of questions and if at any  
23 time you need to -- again, if you need to refer to an individual  
24 who was a member of this jury, would you please refer to them by  
25 a juror number and not by name. The first question is did

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1 anyone other than another juror try to influence your thinking  
2 about this case or your vote on the substantive counts against  
3 any Defendant?  
4 A. No.  
5 Q. Do you have any reason to believe that any other juror was  
6 subjected to attempts to influence his or her thinking about the  
7 case by anyone other than another juror?  
8 A. No, I do not.  
9 Q. Did anyone other than another juror attempt to discuss the  
10 case with you during the time you were serving as a juror in  
11 this case?  
12 A. No.  
13 Q. During the time that you were serving as a juror did you  
14 view or did you hear any news reports or other information  
15 relating to this case or any Defendant from sources such as  
16 newspapers, magazines, radio or television broadcasts or any  
17 Internet sites?  
18 A. No.  
19 Q. During the time that you were serving as a juror did you  
20 view or did you hear any material from any books, newspapers,  
21 Internet sites or any other source relating to any witness, any  
22 legal issue or any factual issue related to this case?  
23 A. I did not.  
24 Q. During the time that you were serving as a juror did you in  
25 any way attempt to independently investigate any facts or law

1 relating to this case?  
2 A. I did not.  
3 Q. During the time that you were serving as a juror did you  
4 overhear any conversations between persons not on the jury or  
5 between non-jurors and any member of the jury relating to this  
6 case?  
7 A. No.  
8 Q. During the time that you were serving as a juror did you  
9 view or did you hear of any extraneous information about the  
10 penalty that might be applicable to any Defendant if he was  
11 convicted of the charges in the indictment?  
12 A. No.  
13 Q. During the time that you were serving as a juror did you  
14 obtain extraneous information from any source about your role as  
15 a juror, your jury service generally, or the role of the  
16 foreperson as a juror in this case?  
17 A. No.  
18 Q. During the time that you were serving as a juror did any  
19 other juror say or do anything that caused you to believe that  
20 he or she had been exposed to extraneous information about this  
21 case from any source?  
22 A. No.  
23 Q. During the time that you were serving as a juror did you  
24 view or did you hear any extraneous information about either the  
25 law applicable to this case or any factual material relating to

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1 this case?  
2 A. No.  
3 Q. Juror Number Eight, I have heard from other witnesses that  
4 have been called by the Court that the foreperson in this case,  
5 Juror Number Seven, indicated at least to some of the other  
6 members of the jury and other witnesses that have been called  
7 that he had investigated his role as a foreperson on this jury.  
8 Did that person ever make that information known to you?  
9 A. No.  
10 Q. Thank you, sir. You may step down and you are free to go.  
11 If you would give that subpoena to Ms. Gregg.  
12 A. Okay. (complies)  
13 THE COURT: Number 30.  
14 THE CLERK: Raise your right hand. You do solemnly  
15 swear or affirm that the testimony you give in this cause to be  
16 the truth, the whole truth, and nothing but the truth, so help  
17 you God.  
18 THE WITNESS: I do.  
19 JUROR NUMBER 30, witness called by the Court,  
20 having been duly sworn or affirmed, testified as follows:  
21 EXAMINATION  
22 BY THE COURT:  
23 Q. First of all, Juror Number 30, thank you for coming today.  
24 I know that this has been an inconvenience for you but I assure  
25 you that it's a necessary part of what we are doing, and it is

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1 done to ensure that both the United States and the Defendants  
2 have had an opportunity for a fair trial in this case. I would  
3 like for you to look at what has been marked as Court's Exhibit  
4 5 and ask you if you have ever seen that exhibit before today's  
5 date?  
6 A. Let's see. I don't know.  
7 Q. Let me see it. Were you served with a subpoena in this  
8 case?  
9 A. Oh, yes, right.  
10 Q. Do you recognize that as the subpoena that you --  
11 A. Right. Yeah.  
12 Q. You have a copy of the subpoena.  
13 A. Yes.  
14 Q. You may compare it if you would like. That I am going to  
15 represent to you is the original of what was served on you, but  
16 you compare what you brought with you.  
17 A. Okay.  
18 Q. Is that what that is, Juror Number 30?  
19 A. Yes. Yes.  
20 Q. And I don't mean to be impersonal, my intentions about  
21 referring to you by number is strictly for your privacy.  
22 A. Okay.  
23 Q. And I would ask that if any question that I ask you requires  
24 that you respond about information about another juror that you  
25 refer to them by their juror number. And there's a list in

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1 front of you if you don't recall their number but you do recall  
2 their name.  
3 A. All right.  
4 Q. Court's Exhibit Number 5 is the subpoena that was served  
5 upon you; is that correct?  
6 A. That's correct.  
7 Q. That subpoena requests that you bring or directs that you  
8 bring certain documents with you that are set out in the portion  
9 of that exhibit that begins you are also commanded to bring with  
10 you the following documents or objects. Did you review that  
11 portion of the subpoena?  
12 A. Yes.  
13 Q. Do you have any documents that are included in that  
14 description of documents that you were to bring?  
15 A. No, I don't.  
16 Q. I am going to ask you a series of questions and I am going  
17 to ask that you, again, out of an abundance of precaution, not  
18 to be redundant, but if it does require that you discuss  
19 anything another juror discussed with you, refer to them by  
20 their juror number.  
21 A. Okay.  
22 Q. Did anyone other than another juror try to influence your  
23 thinking about this case or your vote on the substantive counts  
24 against any Defendant?  
25 A. No.

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- 1 Q. Do you have any reason to believe that any other juror was  
2 subjected to attempts to influence his or her thinking about the  
3 case by anyone other than another juror?  
4 A. No.  
5 Q. Did anyone other than another juror attempt to discuss the  
6 case with you during the time you were a juror in this case?  
7 A. No.  
8 Q. During the time that you were serving as a juror did you  
9 view or did you hear any news reports or other information  
10 relating to this case or any Defendant from sources such as  
11 newspapers, magazines, radio or television broadcasts or any  
12 Internet sites?  
13 A. No.  
14 Q. During the time that you were serving as a juror did you  
15 view or did you hear any material from any books, newspapers,  
16 Internet sites or any other source relating to any witness, to  
17 any legal issue or any factual issue related to this case?  
18 A. No.  
19 Q. Okay. I'm sorry, your answer?  
20 A. No.  
21 Q. During the time that you were serving as a juror did you in  
22 any way attempt to independently investigate any facts or law  
23 relating to this case?  
24 A. No.  
25 Q. During the time that you were serving as a juror did you

- 1 overhear any conversations between persons not on the jury or  
2 between non-jurors and any member of the jury relating to this  
3 case?  
4 A. No.  
5 Q. During the time that you were serving as a juror did you  
6 view or did you hear any extraneous information about the  
7 penalty that might be applicable to any Defendant if he was  
8 convicted of the charges set forth in the indictment?  
9 A. No.  
10 Q. During the time that you were serving as a juror did you  
11 obtain any -- did you obtain any extraneous information from any  
12 source about your role as a juror, your jury service generally,  
13 or the role of the foreperson?  
14 A. No.  
15 Q. During the time that you were serving as a juror did any  
16 other juror say or do anything that caused you to believe that  
17 he or she may have been exposed to extraneous information about  
18 this case from any source?  
19 A. Not -- it was discussed but it was mostly during  
20 deliberations, when we was talking among ourselves, so with the  
21 other jurors, it was just the jury.  
22 Q. All right. Let me ask you to first identify who the juror  
23 or jurors were by their number that may have indicated that they  
24 had been exposed to extraneous information about this case from  
25 any source. Then I will ask you what it was that they had been

- 1 exposed to if you know.  
2 A. I would say Number 40, Juror Number 40.  
3 Q. Juror Number 40?  
4 A. Yeah.  
5 Q. And did she indicate that -- did she indicate anything to  
6 you or any of the other jurors in your presence, anything that  
7 caused you to believe that she had been exposed to extraneous  
8 information about this case from any source during your  
9 deliberations or during your service as a juror?  
10 A. Can you repeat that?  
11 Q. At any time during your service as a juror, to include the  
12 time that you were in deliberations in this case, what was it  
13 that she said, either to you or to any other member of the jury  
14 in your presence, that caused you to believe that she had been  
15 exposed to extraneous information about this case from any  
16 source?  
17 A. The juror said that the trial -- the whole trial was on the  
18 Internet daily, you know, so that's why I assumed that she  
19 probably had read through it on the Internet.  
20 Q. Now, it's my understanding that -- based on my recollection  
21 that the deliberation process in this case took about nine days;  
22 is that right?  
23 A. That's correct.  
24 Q. Was the information that she just shared with you that you  
25 have described something that she indicated after you began your

- 1 deliberations but before you came back with your verdict?  
2 A. This was during the whole trial.  
3 Q. It was before your deliberations began?  
4 A. Before deliberations began.  
5 Q. Did she ever make any reference to what she may have seen on  
6 the Internet about the trial?  
7 A. No.  
8 Q. What was it to the best of your recollection that you recall  
9 her saying about any reports that she may have been aware of,  
10 whether she read them or not?  
11 A. She just -- to the best of my recollection she just said  
12 that the trial was being on the Internet.  
13 Q. Did she ever disclose to you any content of any reports  
14 about the trial on the Internet?  
15 A. No.  
16 Q. To your knowledge did she disclose to any other member of  
17 the jury the content of any report that you may think that she  
18 read about this case that was on the Internet or from any other  
19 media source?  
20 A. Not to my knowledge.  
21 Q. During the time that you were serving as a juror did you  
22 view or hear any extraneous information about either the law  
23 applicable to this case or to any factual material relating to  
24 this case?  
25 A. No.

1 Q. Was Juror Number 40 the only juror to your knowledge that  
2 indicated that she may have been exposed to any extraneous  
3 information as I have described that term to mean?

4 A. No.

5 Q. Who else may have been exposed to extraneous information?

6 A. Let's see, Juror Number Seven.

7 Q. Juror Number Seven I believe was the foreperson of the jury;  
8 is that right?

9 A. Right.

10 Q. What was it that he said that led you to believe that he may  
11 have been exposed to extraneous information about this case or  
12 about his role as a juror or the foreperson of the jury?

13 A. Just to my knowledge it was -- looked like he had probably  
14 read it on the Internet too or saw it on the Internet.

15 Q. Did he say anything that indicated what specifically that he  
16 had read?

17 A. No.

18 Q. Did he ever bring anything into the jury?

19 A. No.

20 Q. Did he ever share anything with you either in written form  
21 or verbally --

22 A. No.

23 Q. -- about what he had read?

24 A. No.

25 Q. How did then you reach the conclusion that he seemed to have

1 been exposed to something on the Internet?

2 A. Well, sometimes -- it's probably from the arrangement, he  
3 was the foreperson, that he was conducting -- he was detailing  
4 the briefing and everything, and just the way he was handling  
5 things, it was kind of done kind of like as the Court's back  
6 style, and I just said well maybe he was watching -- seeing it  
7 on the Internet trying to dictate -- not dictate but running it  
8 as a court. But he was running --

9 Q. Did you reach that assumption based on anything that he said  
10 that indicated that he read anything on the Internet?

11 A. No, no, no. It was just the way -- my way of looking at it  
12 that he was handling it, you know.

13 Q. Did he seem to be handling it inappropriately?

14 A. No, it was appropriate.

15 Q. Was there anyone else that indicated that they may have been  
16 exposed to any extraneous information from any source?

17 A. No.

18 Q. Other than those two?

19 A. No.

20 Q. Thank you, sir. Juror Number 30, you may step down and you  
21 are free to go. If you will hand the subpoena back to  
22 Ms. Gregg.

23 THE COURT: I'm sorry, Juror Number 40.

24 THE CLERK: Raise your right hand. You do solemnly  
25 swear or affirm that the testimony you give in this cause to be

1 the truth, the whole truth, and nothing but the truth, so help  
2 you God.

3 THE WITNESS: I do.

4 JUROR NUMBER 40, witness called by the Court,

5 having been duly sworn or affirmed, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q. Good morning.

9 A. Good morning.

10 Q. If you would adjust yourself so that you can speak into the  
11 microphone and I am going to ask you a series of questions, so  
12 just bear with me. I hope to cover everything that you want to  
13 make known to the Court, and if there's anything that I don't  
14 ask you I will give you an opportunity to make that known to the  
15 Court if you believe I have missed something.

16 A. Okay.

17 Q. Let me start off by keeping this a sequential hearing. And  
18 I appreciate you being here. I am going to refer to you by your  
19 juror number, and you are Juror Number 40.

20 A. That's correct.

21 Q. All right. And in front of you is a list of all of the  
22 other jurors who served in this case and their juror numbers so  
23 that if there's any question that I ask that requires you to  
24 disclose the name of any juror during the course of your service  
25 as a juror in this case, that you refer to them by their juror

1 number --

2 A. Okay.

3 Q. -- and not by their name. And that is intended to protect  
4 not only your identity but theirs as well. Let me begin by  
5 asking you to look at what has been marked as Court's Exhibit  
6 Number 6. Do you recall seeing that before today?

7 A. Yes.

8 Q. And do you recognize that as the subpoena that was served  
9 upon you to appear in court and testify today as a Court's  
10 witness?

11 A. I do.

12 Q. All right. I am going to ask you a series of questions and  
13 if you, again, have any responses that would require that you  
14 disclose the name of any other juror, do so by referring to them  
15 as their juror number. I apologize for being so informal about  
16 it, but again, I want to reiterate ~~that~~ we are here not to  
17 embarrass you or to have anyone think that they are in trouble  
18 for anything that they have done. This is an important part of  
19 the process and I want to be very deliberate in going through  
20 it. Okay? Did anyone other than another juror try to influence  
21 your thinking about this case or your vote on the substantive  
22 counts against any Defendant?

23 A. No.

24 Q. Do you have any reason to believe that any other juror was  
25 subjected to attempts to influence his or her thinking about the

1 case by anyone other than another juror?  
 2 A. No.  
 3 Q. Did anyone other than another juror attempt to discuss the  
 4 case with you during the time you were a juror in this case?  
 5 A. No.  
 6 Q. During the time that you were serving as a juror did you  
 7 view or did you hear any news reports or other information  
 8 relating to this case or to any Defendant from sources such as  
 9 newspapers, magazines, radio or television broadcasts or any  
 10 Internet sites?  
 11 A. I saw a headline on an Internet site and I did not read the  
 12 article but I did see the headline.  
 13 Q. Let me ask you to tell me if you could what Internet site  
 14 you recall seeing that headline on?  
 15 A. I believe it was the Montgomery Advertiser.  
 16 Q. And do you recall when it was during the course of your  
 17 service that you saw the headline on the Internet site?  
 18 A. I don't remember. I couldn't specifically place the date.  
 19 Q. I am not asking you to place the date. Was it during the  
 20 course of the time that you were serving as a juror but before  
 21 you began your deliberations, or was it after you began your  
 22 deliberations and before the verdict was returned?  
 23 A. The only thing I can tell you it was after the time that  
 24 Faulkner got their accreditation because that's what I was  
 25 looking at.

1 Q. Okay. And other than seeing the headline on the Internet  
 2 site of a local newspaper did you read anything else or did you  
 3 hear anything about this case during your service as a juror?  
 4 A. No.  
 5 Q. Why were you looking at the Internet -- strike that. You  
 6 have a right to look at the Internet. Did you ever hear or see  
 7 any other reports about this case from any other sources other  
 8 than that Internet headline that you have just described?  
 9 A. No other media sources, no.  
 10 Q. Do you recall what the headline was that you saw?  
 11 A. I don't.  
 12 Q. Do you recall if you discussed that with any of the other  
 13 members of the jury?  
 14 A. I did not.  
 15 Q. You did not?  
 16 A. I did not.  
 17 Q. During the time that you were serving as a juror did you  
 18 view or did you hear any material from any books, newspapers,  
 19 Internet sites or any other source relating to any witness, any  
 20 legal issue or any factual issue relating to this case?  
 21 A. I did not.  
 22 Q. During the time that you were serving as a juror did you in  
 23 any way attempt to independently investigate any facts or law  
 24 relating to this case?  
 25 A. I did not.

1 Q. During the time that you were serving as a juror did you  
 2 overhear any conversations between persons not on the jury or  
 3 between non-jurors and any member of the jury relating to this  
 4 case?  
 5 A. I did not.  
 6 Q. During the time that you were serving as a juror did you  
 7 view or hear any extraneous information about the penalty that  
 8 might be applicable to any Defendant if he was convicted of the  
 9 charges in this case?  
 10 A. I did not.  
 11 Q. During the time that you were serving as a juror did you  
 12 obtain extraneous information from any source about your role as  
 13 a juror, jury service generally, or the role of the foreperson  
 14 to a jury?  
 15 A. I did not.  
 16 Q. During the time that you were serving as a juror did any  
 17 other juror say or do anything that caused you to believe that  
 18 he or she had been exposed to extraneous information about this  
 19 case from any source?  
 20 A. They did not.  
 21 Q. There has -- and I will say to you that this Court has heard  
 22 testimony that there have been some jurors who have indicated  
 23 that Juror Number Seven, the foreperson, indicated that he  
 24 looked at information about the role of a foreperson. Do you  
 25 recall that ever being discussed in your presence?

1 A. I don't recall it being discussed in my presence, no. Not  
 2 during --  
 3 Q. Up until and including June 29th, 2006, do you ever recall  
 4 that being discussed while you were serving as a juror?  
 5 A. No.  
 6 Q. During the time that you were serving as a juror did you  
 7 view or hear any extraneous information about either the law  
 8 applicable to this case or any factual material relating to this  
 9 case?  
 10 A. No.  
 11 Q. Now, on your subpoena, exhibit -- Court's Exhibit 6, there's  
 12 a section that requires that you bring with you any documents  
 13 that are reflected in the portion of that exhibit that describes  
 14 the documents that you are to bring with you. Have you brought  
 15 any documents with you in response to the subpoena relating to  
 16 any extraneous information that I have discussed with you?  
 17 A. I have.  
 18 Q. Let me see what you have.  
 19 A. (complies)  
 20 Q. For the record you have handed me a manila folder that has  
 21 several documents stapled together, and then it appears that it  
 22 is a copy of the subpoena which is marked Court's Exhibit 6.  
 23 A. That's correct.  
 24 Q. Are there any other documents that you have?  
 25 A. No, sir.

1 Q. I am going to have Ms. Gregg mark the other portion of this  
2 folder as Court's Exhibit 6-A. I am going to give you back your  
3 folder. (complies)  
4 THE CLERK: (complies)  
5 Q. You now have before you Court's Exhibit 6 which is the  
6 subpoena and Court's Exhibit 6-A which is a document that you  
7 handed to me.  
8 A. That's correct.  
9 Q. Tell me what Court's Exhibit 6-A is.  
10 A. It is a copy of the indictment from the -- from this Court  
11 for this case.  
12 Q. Where did you get that?  
13 A. Off of the Middle District of Alabama Web site.  
14 Q. Do you recall when you retrieved that document?  
15 A. The weekend after we began deliberations.  
16 Q. Was a copy of the indictment provided -- or was not a copy  
17 of the indictment provided to the jurors during the deliberation  
18 in this case?  
19 A. It was.  
20 Q. Was the indictment to your knowledge that was provided to  
21 the jury different from what you have identified in Court's  
22 Exhibit 6-A?  
23 A. Not to my knowledge.  
24 Q. What was the purpose of you downloading Court's Exhibit 6-A  
25 at the time that you did?

1 was in the jury deliberation room in this trial?  
2 A. I did.  
3 Q. Did it appear to be the same as what you have described as  
4 Court's Exhibit 6-A?  
5 A. I didn't notice any -- honestly I downloaded this and then I  
6 really -- you know, I may have skimmed it once but by the time  
7 we would leave court we were tired and I usually went home and  
8 went to the gym and went to bed so I really didn't look at it.  
9 Q. You said that you downloaded it over the weekend as you all  
10 deliberated. Now, you deliberated in this case if my memory  
11 serves me correctly for almost nine days.  
12 A. That's correct.  
13 Q. So that would have included at least one weekend.  
14 A. I believe it included two.  
15 Q. I am just saying it had to have included at least one, and I  
16 don't recall. It was the first weekend that you looked at it on  
17 the Court's Internet site?  
18 A. Yes.  
19 Q. And at any time after that weekend did you ever bring that  
20 copy of that exhibit or that exhibit's original into the jury  
21 room?  
22 A. I never brought any document into the jury room.  
23 Q. Do you ever recall seeing any other documents anyone else  
24 brought into the jury room outside of what the Court sent back  
25 for you to consider?

1 A. I just, you know, thought that it would be nice to have an  
2 opportunity to read the indictment. When you are in  
3 deliberations you are constantly discussing and talking and you  
4 don't really get an opportunity to sit and read a document,  
5 especially not one of this length.  
6 Q. Did you bring a copy of Court's Exhibit 6-A or did you bring  
7 the original of Court's Exhibit 6-A into the jury room with you  
8 during the deliberation process?  
9 A. I did not.  
10 Q. Did you discuss the fact that you had looked at anything on  
11 the Court's Internet site relating to this case with any member  
12 of the jury in this trial?  
13 A. I may have mentioned it.  
14 Q. And do you recall what you may have mentioned?  
15 A. Not specifically. I just -- that I had seen a copy of the  
16 indictment on the Web site.  
17 Q. Do you recall how much time that you spent describing what  
18 you saw on the Internet site?  
19 A. A minute, maybe.  
20 Q. Did anyone ask you to show them what you looked at?  
21 A. No.  
22 Q. Did anyone question you about what had you looked at?  
23 A. No.  
24 Q. Did you have an opportunity to look at the indictment that  
25 was provided to you as part of the deliberation process and that

1 A. I never saw anybody bring any other documents -- any  
2 documents into the jury room.  
3 Q. Did you ever hear of anyone discussing anything that they  
4 may have looked at or heard reported in any media, newspaper,  
5 Internet sites, radio or television about this case?  
6 A. I didn't hear anybody talk about anything like that, no.  
7 Q. Is there anything I have not asked you about that you wish  
8 to tell me?  
9 A. I don't believe so.  
10 Q. Have I covered everything that you believe that you have  
11 looked at that is covered in Court's Exhibit 6, which is the  
12 subpoena?  
13 A. Yes.  
14 Q. If you would leave Court's Exhibit 6 and 6-A, you may step  
15 down and you are free to go.  
16 A. Thank you.  
17 THE COURT: Court will be in recess until 1:00 o'clock.  
18 (At which time, 11:05 a.m., a recess was had until  
19 1:08 p.m., after which, with six former jurors in the box, the  
20 hearing continued.)  
21 THE COURT: Good afternoon, ladies and gentlemen. You  
22 are here because you served as the jury or part of the jury in  
23 the case of the United States of America versus Governor  
24 Siegelman and Mr. Scrushy, case number 05cr-119. I thank you  
25 for coming today. You are in the group of the afternoon people

1 who have been called by the Court to testify, and I want you  
2 know that six of your number have testified this morning.

3 In the post-trial phase of this case certain issues  
4 have been raised that have made it necessary for me to call you  
5 to testify at this hearing. This is a fact-finding hearing and  
6 the facts about which testimony is given will be relevant to  
7 this Court in this Court's analysis of certain legal issues  
8 pending before it. This hearing is not intended to seek  
9 information in order to punish any juror for anything that has  
10 happened during this trial. Your truthful and candid testimony  
11 at this hearing is a necessary part of the administration of our  
12 criminal justice system.

13 While I don't want to overwhelm you with all the  
14 specifics of the legal issues before this Court, I do want to  
15 give you some information to help you focus on today's hearing.  
16 The purpose of today's hearing is to determine whether  
17 extraneous information was brought into the jury room or to the  
18 jury's attention by any person, including by any juror, and to  
19 determine whether any outside influence was improperly brought  
20 to bear upon any juror.

21 Let me define a couple of those terms so that you will  
22 know what I mean. By extraneous information I am referring to  
23 any information other than the information that the jury  
24 received from the following sources: The Court's instructions  
25 to you on the law, the evidence that you heard from the witness

1 stand, and the factual evidence presented in this case through  
2 the exhibits admitted into evidence at trial. Any information  
3 that is not in one of those three categories is extraneous  
4 information. By outside influence I mean attempts to influence  
5 a juror's thoughts about the case or the outcome of the jury's  
6 deliberation by anyone other than another juror.

7 I will be asking you a series of questions intended to  
8 explore your knowledge. If you have any such knowledge of  
9 whether extraneous information was brought to the jury's  
10 attention or whether any outside influence was improperly  
11 brought to bear upon any juror, please limit your responses to  
12 what you know about extraneous information or outside  
13 influences. My questions are not intended to cause you to  
14 testify about statements made during the jury's deliberation  
15 other than to the extent that those statements reveal possible  
16 extraneous information or outside influences.

17 Additionally, I am not trying to get you to testify  
18 about the effect of anything upon the actual jury deliberations,  
19 nor am I trying to get you to testify about how any information  
20 discussed by the jurors influenced any juror's mind or emotions,  
21 or caused the juror or jurors to assent or dissent from the  
22 verdict that was reached.

23 During your testimony I will refer to you and to any  
24 other juror by your juror number rather than by your name. And  
25 I ask that you do the same if you should have any response to

1 any question asked of you by the Court. For your convenience a  
2 list of each of the jurors' names and corresponding juror  
3 numbers will be at the witness podium as you are called to  
4 testify. This is intended to preserve the privacy of you and  
5 your fellow jurors.

6 All of my questions will focus on the same time frame.  
7 So for each of your answers limit your responses to the period  
8 of time starting from the date on which you took your oath as a  
9 juror in this case until the time when the jury's verdict was  
10 announced in court, that date being June the 29th, 2006. I am  
11 not interested in anything relating to the period after the  
12 verdict was announced by you and you were released from your  
13 service as a juror.

14 With those instructions in mind, I will ask each of you  
15 in turn a series of questions, and I will ask that you be  
16 dismissed with the marshal. And I will call first to testify in  
17 this case Juror Number 63. If each of you will step out with  
18 the marshal and she knows you by juror number and you will be  
19 called in turn.

20 THE CLERK: Raise your right hand. You do solemnly  
21 swear or affirm that the testimony you give in this cause to be  
22 the truth, the whole truth, and nothing but the truth, so help  
23 you God.

24 THE WITNESS: I do.  
25 THE CLERK: You may be seated.

1 **JUROR NUMBER 63**, witness called by the Court,  
2 having been duly sworn or affirmed, testified as follows:

3 EXAMINATION  
4 BY THE COURT:

5 Q. If you will make yourself comfortable and adjust the  
6 microphone so that everyone can hear you. You can speak to me  
7 if you would prefer, I will be the only one that will be  
8 questioning you here today. First of all thank you for coming.  
9 I know that you may be a little nervous and I am not here to  
10 embarrass you or intimidate you at all. I appreciate your  
11 service as a juror in this case, as do all of the attorneys and  
12 parties in this case, but we do need to find out some additional  
13 information before we are able to go forward with some motions  
14 that are filed, so don't be nervous about your responses. If  
15 you do have responses to questions that I ask you and it  
16 involves the identity of any other of the jurors that served as  
17 a member of the jury in this case, just refer to the list in  
18 front of you and give me their number in place of their name if  
19 you would.

20 A. Okay.

21 Q. Okay?

22 A. Okay.

23 Q. I will ask you first to look at Court's Exhibit Number 7  
24 and let me ask you if you have had an opportunity to see that  
25 before today's date?

1 A. I have.  
2 Q. And do you recognize that to be a copy of the subpoena that  
3 the Court served upon you to appear as a witness to testify in  
4 this case?  
5 A. I do.  
6 Q. Before you came to court today did you review this exhibit  
7 and have an opportunity to review the portion of the subpoena  
8 which required or commanded you to bring certain documents if  
9 you had any of those in your possession?  
10 A. Yes, I did.  
11 Q. Do you have any exhibits or any documents that are discussed  
12 or required -- or that you were required to bring to court with  
13 you today pursuant to this subpoena?  
14 A. I do not.  
15 Q. All right. Let me ask you some questions, and if you have  
16 any responses, again, please refer to those individuals that  
17 that would include if it's other than you by their juror  
18 number. Did anyone other than another juror try to influence  
19 your thinking about this case or your vote on the substantive  
20 counts against any Defendant in this case?  
21 A. No.  
22 Q. Do you have any reason to believe that any other juror was  
23 subjected to attempts to influence his or her thinking about the  
24 case by anyone other than another juror?  
25 A. No.

1 charges in the indictment?  
2 A. No.  
3 Q. During the time that you were serving as a juror did you  
4 obtain any extraneous information from any source about your  
5 role as a juror, your jury service generally or the service of  
6 the foreperson of this jury?  
7 A. No.  
8 Q. During the time that you were serving as a juror did any  
9 other juror say or do anything that caused you to believe that  
10 he or she had been exposed to extraneous information about this  
11 case from any source?  
12 A. No.  
13 Q. If other jurors have testified that -- and not all have  
14 testified, I will say other jurors have testified earlier that  
15 the foreperson of this jury indicated that he had received  
16 information about his duty as a foreperson outside of what the  
17 Court's instructions to the jury was, was that ever discussed in  
18 your presence?  
19 A. I don't remember that.  
20 Q. Did anyone to your knowledge ever bring any documents into  
21 the jury deliberation room other than the exhibits and the  
22 Court's instructions on the law?  
23 A. Could you repeat that?  
24 Q. Did you ever see any documents, any papers that were in the  
25 jury room other than what the Court provided you as the evidence

1 Q. Did anyone other than another juror attempt to discuss the  
2 case with you during the time you were a juror in this case?  
3 A. No.  
4 Q. During the time that you were serving as a juror did you  
5 view or hear any news reports or other information relating to  
6 this case or any Defendant from sources such as newspapers,  
7 magazines, radio or television broadcasts or any Internet sites?  
8 A. No.  
9 Q. During the time that you were serving as a juror did you  
10 view or hear any material from any books, newspapers, Internet  
11 sites or any other source relating to any witness, any legal  
12 issue or any factual issue related to this case?  
13 A. No.  
14 Q. During the time that you were serving as a juror did you in  
15 any way attempt to independently investigate any facts or law  
16 relating to this case?  
17 A. No.  
18 Q. During the time that you were serving as a juror did you  
19 overhear any conversations between persons not on the jury or  
20 between non-jurors and any member of the jury relating to this  
21 case?  
22 A. No.  
23 Q. During the time that you were serving as a juror did you  
24 view or hear any extraneous information about the penalty that  
25 might be applicable to any Defendant if he was convicted of the

1 In this case and the Court's instructions to you on the law,  
2 brought in by anyone?  
3 A. Yes.  
4 Q. Tell me what you recall being brought in to the jury room.  
5 A. Juror Number 16.  
6 Q. Juror number --  
7 A. No, not -- 40 -- wait a minute. 40.  
8 Q. Number 40. Okay. What did she bring into the jury room?  
9 A. I am thinking it was a transcript. I don't know. I am not  
10 really for sure.  
11 Q. Did you ever see it?  
12 A. I seen it. I seen it.  
13 Q. And what was it? If you can describe it, do you recall what  
14 it looked like?  
15 A. It looked like the -- some of the information about the  
16 transcript that was here.  
17 Q. Could it have been a copy of the indictment?  
18 A. Yes. I am thinking that's what it was, a copy.  
19 THE COURT: Let me see 6-A.  
20 THE CLERK: (complies)  
21 Q. Do you recall a copy of the indictment of the charges  
22 against each of the four Defendants being provided to the jurors  
23 as part of the exhibits in the trial of the case?  
24 A. I can't recall exactly.  
25 Q. Do you recall the Court having provided you with a copy of

1 the indictment?  
2 A. Uh-huh.(positive response) Yes, sir.  
3 Q. All right. Let me show you what has been marked as Court's  
4 Exhibit 6-A. (complies) Do you recall ever seeing that before  
5 today's date?  
6 A. Not all of it. I don't remember seeing all of it.  
7 Q. Do you remember seeing any of it?  
8 A. I am thinking mostly this first page here. I can't remember  
9 seeing all of it.  
10 Q. Was it shared with you or other members of the jury,  
11 whatever this information that was brought in?  
12 A. All I know, she said she had it, and I remember her having  
13 it in her hand, and I could see the front page of it.  
14 Q. Okay. And by her having it in her hand and you seeing the  
15 front page, was it ever shared in any greater detail with anyone  
16 on that jury other than what you have described?  
17 A. I can't recall.  
18 Q. Did she ever read it to you?  
19 A. I can't recall.  
20 Q. I am not trying to trip you up and I want you to be as  
21 honest with me as I know that you can. Part of the exhibits  
22 that went back to the jury room included a copy of the  
23 indictment as it was redacted by the Court. Do you know for  
24 sure if what you were shown was something that Juror Number 40  
25 brought in to the jury room on her own or could it have been an

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1 that she brought in to the jury room?  
2 A. Only thing I can remember truly is she was saying she  
3 downloaded it on the Internet.  
4 Q. That she downloaded it on the Internet?  
5 A. Uh-huh.(positive response) Yes, sir.  
6 Q. And you think it could have been the front page at least of  
7 which has been marked as Court's Exhibit 6-A? Could it have  
8 been that?  
9 A. Yes, sir.  
10 Q. Okay. Did Juror Number 40 bring in anything else other than  
11 that document?  
12 A. No, sir.  
13 Q. Did anyone else bring in any other documents?  
14 A. Not that I can recall.  
15 Q. All right. Did anyone discuss with you any extraneous  
16 information that they had gained through information that they  
17 had seen outside of this trial, either through any news sources,  
18 Internet sites, radio or television coverage of this trial?  
19 A. No, sir.  
20 Q. During the time that you were serving as a juror did you  
21 view or hear any extraneous information about either the law  
22 applicable to this case or any factual materials relating to  
23 this case other than what you have just told me?  
24 A. No, sir.  
25 Q. Now, the jury deliberated for nine days if my memory serves

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1 exhibit that was already in the jury room for you to look at?  
2 A. I am not -- it was something that she brought in, I  
3 remember.  
4 Q. But you are sure she brought it in and it was not there for  
5 you to look at?  
6 A. No.  
7 Q. Okay. How do you know that she brought it in? Did you see  
8 her take it out of her purse or out of her coat or jacket or  
9 anything?  
10 A. Out of her -- I am thinking it was her coat.  
11 Q. Okay. Do you know how many pages it was?  
12 A. No.  
13 Q. Do you know how long it was that she discussed it with the  
14 members of the jury?  
15 A. No.  
16 Q. Was this after you began your deliberations?  
17 A. Yes.  
18 Q. Did her discussions about whatever she brought in last  
19 longer than half a day?  
20 A. No.  
21 Q. Did it last longer than an hour?  
22 A. No.  
23 Q. Did it last as much as half an hour?  
24 A. Maybe half an hour.  
25 Q. And what was it that y'all discussed about that document

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1 me right.  
2 A. Yes, sir, I think.  
3 Q. And during that nine day period that the jury deliberated  
4 the only person -- I am not trying to put words in your mouth, I  
5 want you to correct me if I am reciting what you have told me  
6 wrong -- the only person that you say brought in any papers to  
7 the jury room was Juror Number 40.  
8 A. Yes, sir.  
9 Q. And she is the only person who ever even said that she had  
10 looked at any extraneous information about this case.  
11 A. Yes.  
12 Q. By downloading certain information from the Internet.  
13 A. Yes. That I recall.  
14 Q. And she brought that document into the jury room and you are  
15 saying, your testimony is, that the jury never deliberated or  
16 never discussed the content of whatever it was that she brought  
17 in for more than 30 minutes?  
18 A. No more than 30 minutes.  
19 Q. And that could have been a copy of what has been shown to  
20 you as Court's Exhibit 6-A?  
21 A. It could have been.  
22 Q. Did you ever hold it in your hand and look at it page by  
23 page?  
24 A. No, sir.  
25 Q. Was it ever offered to you to be looked at?

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1 A. No, sir.

2 Q. Was it ever offered to anyone else to be looked at?

3 A. No, sir.

4 Q. She just had it herself?

5 A. Yes, sir.

6 Q. Did she read anything off of it to anyone there in the jury  
7 room?

8 A. Yes, sir.

9 Q. Do you recall what it was she read, what it had -- what it  
10 dealt with?

11 A. No, sir.

12 Q. But you are sure it was from what could possibly be Court's  
13 Exhibit 6-A?

14 A. Yes, sir.

15 Q. And again, you have no documents that you brought with you  
16 today in reference to the subpoena that I have issued to you in  
17 this case?

18 A. No, sir.

19 Q. Ma'am, you may step down and you are free to go. Thank you  
20 for coming today.

21 MR. LEACH: Judge, before the next juror comes in I  
22 have something I want to put on the record. I know you don't  
23 want to stop, but I just want the record to reflect that I am  
24 asking you to interject at this point.

25 THE COURT: What is the purpose of your request?

1 MR. LEACH: I am concerned about the next jurors that  
2 you are going to interview, Judge, and I just think that it  
3 would be a modification in the way that you are handling the  
4 jurors and I would ask that the Court consider it. I don't need  
5 to say it in public.

6 THE COURT: State it briefly.

7 MR. LEACH: Judge, I am concerned that -- and I  
8 understand that you are trying to be gentle with the jurors, but  
9 by leading the jurors the way that you are, I would just suggest  
10 that an open-ended question, describe the document, tell us what  
11 was in the document, what did you talk about with regard to the  
12 document. You took her right into the indictment, Judge, and  
13 she never did explain what the content of that document was. I  
14 would ask that she be brought back in and be asked those  
15 questions. And with regard to the rest of the jurors that we  
16 are going to talk to, let it be open-ended. That's my request.

17 THE COURT: Thank you for that request. Juror Number  
18 29 will be next.

19 MR. FEAGA: Your Honor, might we respond for the record  
20 just briefly?

21 THE COURT: If you want to respond for the record I  
22 will give you that opportunity to do it very quickly.

23 MR. FEAGA: I will do it very quickly, Your Honor. We  
24 disagree with everything that Mr. Leach just said to the Court.

25 THE CLERK: Raise your right hand. You do solemnly

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1 swear or affirm that the testimony you give in this cause to be  
2 the truth, the whole truth, and nothing but the truth, so help  
3 you God.

4 THE WITNESS: I do.

5 THE CLERK: You may be seated.

6 JUROR NUMBER 29, witness called by the Court,  
7 having been duly sworn or affirmed, testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q. Good afternoon.

11 A. Your Honor.

12 Q. I don't mean to be so impersonal as to refer to you by a  
13 juror number but for your own identity and the protection  
14 thereof I am going to refer to you as Juror Number 29.

15 A. All right.

16 Q. If you will look in front of you you will see what I have  
17 marked as Court's Exhibit Number 8.

18 A. Okay.

19 Q. Before you got here today did you get a copy or did you get  
20 the original of that exhibit?

21 A. I did.

22 Q. And do you recognize that as the subpoena that was served on  
23 you at the direction of the Court for you to appear and testify  
24 at today's hearing?

25 A. I do.

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1 Q. And as part of that subpoena were you commanded to bring  
2 with you certain documents that were particularly described in  
3 the second portion of the subpoena which includes any evidence  
4 of any documents or extraneous evidence that was either viewed  
5 by you or in your possession or brought into the jury room that  
6 you now have in your possession?

7 A. I did not.

8 Q. Do you -- do you have any documents that would fall under  
9 the category of documents that you were commanded to bring with  
10 you today?

11 A. No, sir.

12 Q. All right. And again, I apologize for being so impersonal  
13 as to refer to you as Juror Number 29, and I would ask that for  
14 the sake of the privacy of the other members of the jury who we  
15 are here to talk about that we refer to them by their juror  
16 number.

17 A. All right.

18 Q. Now, y'all were together for almost ten weeks or maybe a  
19 little bit longer and I am sure that you remember them by name  
20 but you may not remember their number so I have provided a list  
21 in front of you so that you can refer to them if any response to  
22 any question that I ask you requires that you respond.

23 A. Okay.

24 Q. I know you are soft spoken so if you would adjust the  
25 microphone so that everyone can hear you.

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1 A. Okay.

2 Q. And speak into the microphone. I am going to ask you about

3 11 questions.

4 A. Okay.

5 Q. Did anyone other than another juror try to influence your

6 thinking about this case or your vote on the substantive counts

7 against any Defendant?

8 A. No, sir.

9 Q. Do you have any reason to believe that any other juror was

10 subjected to attempts to influence his or her thinking about the

11 case by anyone other than another juror?

12 A. No, sir.

13 Q. Did anyone other than another juror attempt to discuss the

14 case with you during the time you were a juror in this case?

15 A. No, sir.

16 Q. During the time that you were serving as a juror did you

17 view or did you hear any news reports or other information

18 relating to this case or any Defendant from sources such as

19 newspapers, magazines, radio or television broadcasts or any

20 Internet sites?

21 A. No, sir.

22 Q. During the time that you were serving as a juror did you

23 view or did you hear any material from any books, newspapers,

24 Internet sites or any other source relating to any witness, any

25 legal issue or any factual issue related to this case?

1 A. No, sir.

2 Q. During the time that you were serving as a juror did you in

3 any way attempt to independently investigate any facts or law

4 relating to this case?

5 A. No, sir.

6 Q. During the time that you were serving as a juror did you

7 overhear any conversations between persons not on the jury or

8 between non-jurors and any member of the jury relating to this

9 case?

10 A. Could you repeat that? I'm sorry.

11 Q. During the time that you were serving as a juror did you

12 overhear any conversations between persons not on the jury or

13 between non-jurors and any members of the jury relating to this

14 case?

15 A. No, sir.

16 Q. During the time that you were serving as a juror did you

17 view or hear any extraneous information about the penalty that

18 might be applicable to any Defendant if he was convicted of the

19 charges as set forth in the indictment?

20 A. No, sir.

21 Q. During the time that you were serving as a juror did you

22 obtain any extraneous information from any source about your

23 role as a juror, the jury's role generally or the role of the

24 foreperson on the jury?

25 A. No, sir.

1 Q. During the time that you were serving as a juror did any

2 other juror say or do anything that caused you to believe that

3 he or she had been exposed to extraneous information about this

4 case from any source?

5 A. Yes, sir.

6 Q. All right. Let me first ask you to identify which person or

7 persons may have indicated anything which would have led you to

8 believe that he or she had been exposed to extraneous

9 information.

10 A. Juror Number 40, and seven.

11 Q. Okay. Let's start with Juror Number 40. What was it that

12 led you to believe that she had been exposed to extraneous

13 information about this case?

14 A. I think during the case she indicated she went on line and

15 got a copy of the indictment.

16 Q. Did she ever bring a copy of that document into the jury

17 room?

18 A. Not that I am aware of.

19 Q. How did you know that she had gotten a copy of the

20 indictment if she didn't bring it into the jury room?

21 A. She indicated that she had been on line and saw it out

22 there.

23 Q. Okay. Did y'all discuss that fact among yourselves?

24 A. No, sir.

25 Q. How long was the total amount of time that was spent either

1 by her or anyone asking her about having seen that indictment on

2 the Internet?

3 A. Probably about a minute. She discussed it and they said she

4 shouldn't have looked at it and that was it.

5 Q. All right. Did she look at or do you think that she was

6 exposed to any other extraneous information about this case?

7 A. No, sir.

8 Q. Was that the only thing you recall from her?

9 A. Yes, sir.

10 Q. All right. You also said Juror Number Seven. Tell me what

11 it was that Juror Number Seven either showed you or spoke with

12 you about to lead you to believe that he had brought or been

13 exposed to extraneous information about this case from any

14 source.

15 A. Well, he indicated he went on line and pulled up information

16 on the foreman. I am not sure what else he looked at but that's

17 all he indicated.

18 Q. That's all he indicated?

19 A. Yes, sir.

20 Q. So he announced to the jury that he went on line and did

21 what?

22 A. Pulled up information concerning what a foreman should do.

23 Q. Do you recall when that happened?

24 A. No, sir. I think it was probably when we first went into

25 deliberation.

1 Q. Was it soon after he was elected foreperson of the jury?  
2 A. I am not sure.  
3 Q. How long or how much time was spent on his discussion with  
4 the other members of the jury the fact that he had gone on line  
5 and looked at what the duties of a foreperson were?  
6 A. I think he just indicated what he should be doing. Probably  
7 about two or three minutes, if that long.  
8 Q. Did he ever tell y'all what he should be doing?  
9 A. No, sir.  
10 Q. Okay. He just said that he had seen it?  
11 A. Yes, sir.  
12 Q. Did you know that the Court's instructions to the jury also  
13 required some brief statement about what the obligations of the  
14 foreperson were?  
15 A. Yes, sir.  
16 Q. Was anything that he said inconsistent with what the Court  
17 said?  
18 A. No, sir.  
19 Q. And you say the total time that he spent describing for you  
20 that he had looked this up on the Internet was --  
21 A. Probably two or three minutes.  
22 Q. -- probably two to three minutes. Did Juror Number Seven  
23 indicate that he had looked at any other extraneous information  
24 about this case?  
25 A. No, sir.

1 Q. Did anyone else indicate to you in any form or fashion that  
2 they had looked at any extraneous information about this case?  
3 A. No, sir.  
4 Q. And you say Juror Number 40 indicated that she looked at the  
5 indictment but you are sure she didn't bring it into the  
6 courtroom --  
7 A. I didn't see it.  
8 Q. -- or into the jury room?  
9 A. I didn't see it.  
10 Q. During the time that you were serving as a juror did you  
11 view or hear any extraneous information about either the law  
12 applicable to this case or any factual material relating to this  
13 case?  
14 A. No, sir.  
15 Q. Juror Number 29, I thank you for your time today. You may  
16 step down and you are free to go.  
17 THE COURT: Number 16.  
18 THE CLERK: Raise your right hand. You do solemnly  
19 swear or affirm that the testimony you give in this cause to be  
20 the truth, the whole truth, and nothing but the truth, so help  
21 you God.  
22 THE WITNESS: I do.  
23 THE CLERK: You may be seated.  
24 JUROR NUMBER 16, witness called by the Court,  
25 having been duly sworn or affirmed, testified as follows:

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1 EXAMINATION  
2 BY THE COURT:  
3 Q. Good afternoon.  
4 A. Good afternoon.  
5 Q. I would ask that if you have any response to any questions  
6 that I give or I ask of you that you speak into the microphone  
7 as you have just done. I also give you or remind you of a few  
8 other instructions that I have given. My intentions today are  
9 not to intimidate or harass you in any form or fashion, it's  
10 merely to find out what extraneous information or outside  
11 influence was imposed upon the jury, if any at all during the  
12 process that you served as a juror during the trial of this  
13 case. Please be candid with the Court and if you don't  
14 understand any questions don't be hesitant in the least bit to  
15 ask me to restate it or ask me what I mean by my question. And  
16 I am going to refer to you by your juror number, and you are  
17 Juror Number 16.  
18 A. That's correct.  
19 Q. I do not normally act so impersonally, so I apologize, but  
20 for the sake of your privacy that is the reason that we are  
21 conducting the hearing as we are doing it today.  
22 A. Yes, sir.  
23 Q. If you would also refer to any other jurors whose names may  
24 be included in any responses to questions that I may give by  
25 their numbers for the sake of their privacy I would ask that you

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1 do that.  
2 A. Yes, sir.  
3 Q. And for the convenience of you I have provided -- and the  
4 other people who are testifying, I have provided a list of the  
5 jurors with their corresponding juror number so that you can  
6 recall their number if you don't remember their number. I am  
7 sure you remember their name. If you would, take a look at what  
8 has been provided to you, and that is Court's Exhibit Number 9.  
9 Do you ever recall seeing a copy of that before today's date?  
10 A. Yes, sir.  
11 Q. Do you recognize that to be a subpoena issued by this Court  
12 for you to appear and to testify here in court today about this  
13 case?  
14 A. Yes, sir.  
15 Q. When you were served with the subpoena by the United States  
16 Marshal Service did you personally receive the subpoena?  
17 A. Yes, sir.  
18 Q. And did it have a requirement that commanded you to bring  
19 any documents that you may have in your possession, the  
20 description of which is quite lengthy underneath that block  
21 which is checked you are commanded to bring the following?  
22 A. Yes, sir.  
23 Q. Did you review those documents -- did you review the content  
24 of what was described in that paragraph?  
25 A. I did.

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1 Q. Do you have any documents that fall under that category of  
2 documents that you were directed to bring?  
3 A. I do not.  
4 Q. All right. I am going to ask you a few questions, and if  
5 any question that I ask causes you to respond with the name of  
6 any juror please don't forget to refer to them by juror number.  
7 Did anyone other than another juror try to influence your  
8 thinking about this case or your vote on the substantive counts  
9 against any Defendant?  
10 A. They did not.  
11 Q. Do you have any reason to believe that any other juror was  
12 subjected to attempts to influence his or her thinking about the  
13 case by anyone other than another juror?  
14 A. They did not.  
15 Q. Did anyone other than another juror attempt to discuss the  
16 case with you during the time you were a juror in this case?  
17 A. They did not.  
18 Q. During the time that you were serving as a juror did you  
19 view or hear any news reports or other information relating to  
20 this case or any Defendant from sources such as newspapers,  
21 magazines, radio, television broadcasts or any Internet site  
22 broadcast about this trial?  
23 A. I did not.  
24 Q. During the time that you were serving as a juror did you  
25 view any materials from any books, newspapers, Internet sites or

1 other sources relating to any witness, any legal issue or any  
2 factual issue related to this case?  
3 A. I did not.  
4 Q. During the time that you were serving as a juror did you in  
5 any way attempt to independently investigate any facts or law  
6 relating to this case?  
7 A. I did not.  
8 Q. During the time that you were serving as a juror did you  
9 overhear any conversations between persons not on the jury or  
10 between non-jurors and any member of the jury relating to this  
11 case?  
12 A. I did not.  
13 Q. During the time that you were serving as a juror did you  
14 view or hear any extraneous information about the penalty that  
15 might be applicable to any Defendant if he was convicted of the  
16 charges set forth in the indictment?  
17 A. I did not.  
18 Q. During the time that you were serving as a juror did you  
19 obtain any extraneous information from any source about your  
20 role as a juror, jury service generally, or the role of the  
21 foreperson to the jury?  
22 A. I did not.  
23 Q. During the time that you were serving as a juror did any  
24 other juror say or do anything that caused you to believe that  
25 he or she had been exposed to extraneous information about this

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1 case from any source?  
2 A. It was just brought to the attention that the jury foreman  
3 had looked up what his role was as a foreperson.  
4 Q. And I believe that individual is Juror Number Seven; is that  
5 right?  
6 A. That's correct.  
7 Q. And you recall him looking at what, or saying what?  
8 A. He said that he had looked it up on the Internet.  
9 Q. And he had looked what up on the Internet?  
10 A. His role as the foreperson.  
11 Q. Do you recall when he said that he had looked this up?  
12 A. I think it was our second day of deliberations.  
13 Q. Now, I recall the jury deliberating for about nine days, is  
14 that accurate with what you remember?  
15 A. I think so.  
16 Q. And you recall the second day --  
17 A. Yes, sir.  
18 Q. -- him coming into the jury room, and when during the day  
19 did he say this and then what was it that you recall him saying  
20 as best that you can recall?  
21 A. I am pretty sure it was right at the beginning of  
22 deliberations the second day, because we were all pretty much  
23 confused about what we were going to do with everything that was  
24 there in front of us, so he just wanted to make sure that we  
25 were going to do what we were supposed to do.

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1 Q. Did he bring any documents with him other than what he had  
2 told you he had seen?  
3 A. He did not.  
4 Q. Did anyone else ever indicate that they had been exposed to  
5 extraneous information about this case from any source other  
6 than what Juror Number Seven said?  
7 A. I do not recall.  
8 Q. Could they have said and you don't recall or do you say I  
9 don't recall because it, in fact, was not discussed?  
10 A. It really was not discussed.  
11 Q. How long did you recall the foreperson, Juror Number Seven,  
12 saying that he had looked up this information on the Internet  
13 and having discussed that with the jury, how much time during  
14 your deliberative process did that discussion take place?  
15 A. What I recall is the second day he just let us know that he  
16 had looked up what his role as the foreperson was to be and that  
17 was the end of it.  
18 Q. Now, you had instructions from the Court about your role as  
19 a jury --  
20 A. That is correct.  
21 Q. -- and his role as the foreperson of the jury.  
22 A. That is correct.  
23 Q. Did he ever specify what his role was specifically that he  
24 had looked up on the Internet?  
25 A. No, he did not.

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1 Q. Did he ever indicate if his role was different than what the  
2 Court had required his role to be?

3 A. No, he did not.

4 Q. He just announced that he had looked it up?

5 A. That is correct.

6 Q. Did he ever indicate that he had looked up anything else  
7 about this case?

8 A. No, he did not.

9 Q. During the time that you were serving as a juror did you  
10 view or hear any extraneous information about either the law  
11 applicable to this case or any factual material relating to this  
12 case?

13 A. No, your book was pretty thorough.

14 Q. All right. I will take that as a complement. Thank you,  
15 ma'am. Juror Number 16, I appreciate you coming today, I know  
16 you had to drive some distance and I appreciate you taking the  
17 time to do that. You may step down and you are free to go.

18 A. Thank you.

19 THE COURT: If you will give Court's Exhibit Number 9  
20 to Ms. Gregg.

21 THE WITNESS: (complies)

22 THE COURT: Number Seven.

23 THE CLERK: Raise your right hand. You do solemnly  
24 swear or affirm that the testimony you give in this cause to be  
25 the truth, the whole truth, and nothing but the truth, so help

1 you God.

2 THE WITNESS: Yes.

3 THE CLERK: You may be seated.

4 JUROR NUMBER SEVEN, witness called by the Court,  
5 having been duly sworn or affirmed, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q. If you would make yourself comfortable, sir. I hate to be  
9 so impersonal but I am going to refer to you by your juror  
10 number, and you are Juror Number Seven.

11 A. Right.

12 Q. And I know you are soft spoken so I am going to ask that you  
13 adjust your chair and the microphone so that we can hear you,  
14 and I would ask that you give an audible response to each  
15 question that I ask of you because we are trying to make a  
16 record for the Court.

17 A. Sure.

18 Q. Part of the questioning that I will ask of you might include  
19 responses that would require you to identify other members of  
20 the jury and I would ask for the protection of their identity  
21 that you refer to them by their juror number. And if you can't  
22 remember their number, certainly I am sure with the time you  
23 spent together you remember their names.

24 A. Yes, sir.

25 Q. Please refer to them by their numbers and not their names.

1 Let me first ask that you look at what has been marked as  
2 Court's Exhibit Number 10. Have you seen a copy of that before  
3 today's date?

4 A. Yes.

5 Q. Do you recognize that to be a -- actually it's the original  
6 of the subpoena that was served upon you requiring your  
7 attendance to testify as a witness at this hearing today.

8 A. Yes.

9 Q. As part of that subpoena it is a requirement that you bring  
10 with you certain documents or objects, a further description,  
11 and it's several sentences long --

12 A. Yes, sir.

13 Q. -- about documents to bring with you. Have you had a chance  
14 to review any documents that you have in your possession that  
15 might fall under that category of documents required for you to  
16 bring?

17 A. Yes.

18 Q. And have you brought everything with you today that that  
19 subpoena requires you to bring?

20 A. I brought one document that I was able --

21 Q. I am going to get with you on things and let you explain  
22 further, I am saying to you for those things that you have in  
23 your possession, have you brought all of them today?

24 A. Yes.

25 Q. I am going to ask you some questions and we will cover those

1 exhibits at the end.

2 A. Okay.

3 Q. Did anyone other than another juror try to influence your  
4 thinking about this case or your vote on the substantive counts  
5 against any Defendant?

6 A. No.

7 Q. Do you have any reason to believe that any other juror was  
8 subjected to attempts to influence his or her thinking about the  
9 case by anyone other than another juror?

10 A. No.

11 Q. Did anyone other than another juror attempt to discuss the  
12 case with you during the time you were a juror in this case?

13 A. No.

14 Q. During the time that you were serving as a juror did you  
15 view or did you hear any news reports or other information  
16 relating to this case or to any Defendant in this trial from  
17 sources such as newspapers, magazines, radio, television  
18 broadcasts or Internet sites?

19 A. I would say I had some inadvertent exposure to some of  
20 that. For example, I get two newspapers delivered to my house,  
21 and over the course of two months I really was unable to avoid  
22 seeing the headlines in those. I did not read the articles.  
23 Similar on the Internet, I would be on the Internet on occasion  
24 and did see reference to some articles, but again, I did not  
25 read those articles.

1 Q. And I can't ask that you not be human. Did you follow the  
2 Court's Instructions as best that you could --  
3 A. Yes.  
4 Q. -- to avoid any media coverage of this trial?  
5 A. Yes.  
6 Q. When you got your newspaper, as I did, and I would open the  
7 newspaper up, obviously there may be headlines about the case.  
8 Other than seeing the headlines and knowing that it related to  
9 this trial, do you recall what the headlines were?  
10 A. No.  
11 Q. Do you -- and you said you never read the stories?  
12 A. Correct.  
13 Q. Either on print or the Internet?  
14 A. Not during the trial. I went back after the fact, but not  
15 during the trial.  
16 Q. I am not interested in anything that happened after June  
17 29th.  
18 A. Okay.  
19 Q. Before the trial ended, while you were a juror in this case,  
20 do you recall reading any articles on the Internet, television,  
21 newspaper, radio about this trial other than what you have  
22 described?  
23 A. No.  
24 Q. Did you ever discuss that fact that you had inadvertently  
25 seen headlines or seen Internet reference sites about this case

1 to any juror during the deliberative process?  
2 A. I don't believe so.  
3 Q. Could you have come in and told them oh, I saw this article  
4 in the paper today?  
5 A. I really don't think I did.  
6 Q. During the time that you were serving as a juror did you  
7 view or did you hear any material from any books, newspapers,  
8 Internet sites or any other source relating to any witness, any  
9 legal issue or any factual issue related to this case?  
10 A. I think the answer to that question is no.  
11 Q. Okay. Would you like me to repeat it? Let me repeat it --  
12 A. If you would.  
13 Q. -- for the sake of clarity. During the time that you were  
14 serving as a juror did you view or did you hear any material  
15 from any books, newspapers, Internet sites or any other source  
16 relating to any witness, any legal issue or any factual issue  
17 related to this case?  
18 A. Let me -- in answer to that let me -- can I just get into --  
19 because I am not sure how to answer that, that particular  
20 question.  
21 Q. Answer the best that you can.  
22 A. Okay. Well, and there's a document here that I brought with  
23 me that you will see that relates to something else that I guess  
24 you will get to in a few minutes. It may be that it's  
25 appropriate for me to answer this particular question to let you

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1 know that early --  
2 Q. Let me -- I am not trying to cut you off but let me ask you  
3 this, what does your document that you brought with you deal  
4 with?  
5 A. This is a document on the Court's Web site here that is sort  
6 of a handbook for jurors and has in there a couple of lines  
7 about the role of the foreman of the jury. That's the one I  
8 brought with me.  
9 Q. All right. I will ask you specifically about that later.  
10 A. Okay.  
11 Q. Other than that -- let me repeat this question. If you will  
12 discard that document that you have there. During the time that  
13 you were serving as a juror did you view or hear any material  
14 from any books, newspapers, Internet sites or any other source  
15 relating to any witness, any legal issue or any factual issue  
16 related to the case?  
17 A. Because I do want to acknowledge something I will say yes,  
18 and hoping this is the right place to do that.  
19 Q. Tell me what your answer is.  
20 A. Okay. Early in the deliberation process as we really  
21 struggled with understanding how to comprehend and understand  
22 the organization of the indictment that was provided to us, as  
23 well as the instructional book that had been provided to us, it  
24 occurred to me that I might be able to better understand it and  
25 to help better to lead the discussion if I had some private time

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1 with the indictment to read it and understand its organization  
2 better --  
3 Q. Okay.  
4 A. -- and so I located a copy of the indictment.  
5 Q. Where did you locate that indictment?  
6 A. I tried to go back this week and find it and I could not. I  
7 believe it was on the District Court's Web site. That's what I  
8 am remembering.  
9 Q. Okay.  
10 A. And so I located that, printed it out, read it privately at  
11 home. Made some organizational-type notes to myself on there.  
12 This was just independent thinking, no other sources involved.  
13 And just to help me better understand how that document was  
14 written and to try to do a better job of leading the discussion.  
15 Q. You also referenced the -- I guess the discovery of  
16 information on the Court's Web site about the role of the  
17 foreperson of the jury as well.  
18 A. Correct.  
19 Q. And did you print that document out?  
20 A. I don't remember. I printed it out this past week to bring  
21 it here. I don't remember printing that out originally. I seem  
22 to remember just basically sitting there reading that and, you  
23 know, thinking okay, that's what I am supposed to do, and that  
24 was the end of that.  
25 Q. Do you recall the instructions on the Court's Web site about

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1 what a foreperson is supposed to do that would be different from  
2 what the Court's instructions were to you about the role of a  
3 foreperson?

4 A. I don't remember everything that you had said, but  
5 essentially no. It's to lead the discussion, make sure that  
6 everybody around the table has a chance to be heard and, you  
7 know, that kind of thing. Very brief, very to the point and  
8 very general.

9 Q. Going back to the indictment. You said you printed it out  
10 and you made some notes --

11 A. Yes.

12 Q. -- about I presume some of the counts in the indictment?

13 A. I don't still have that document. After a couple of days of  
14 having it we tended to get the hang of it and I didn't need it  
15 any more so really I believe I threw it away at home and so I no  
16 longer have it. My notes on there were really organizational in  
17 nature, you know, what in here relates to what over in the  
18 Court's instruction notebook. And that's a problem we had,  
19 flipping back and forth.

20 Q. I don't want to hear what y'all got into about how you  
21 reached your verdict, I just want to know about extraneous  
22 information --

23 A. Okay.

24 Q. -- was it brought into that jury room at any time during  
25 your course of -- during the course of service as a juror, and

1 how much time you spent discussing that.

2 A. Okay.

3 Q. You said that you printed off a copy of the indictment at  
4 your home,

5 A. Yes.

6 Q. Was that after the case was submitted to the jury for your  
7 deliberations?

8 A. Yes, we were in deliberation at that point.

9 Q. You printed off a copy and made notes.

10 A. Yes.

11 Q. Did you bring that document with you into the jury  
12 deliberation room?

13 A. I did.

14 Q. Did you share that with anyone in the jury deliberation  
15 room?

16 A. I don't believe so.

17 Q. Did you share your subjective knowledge that you had  
18 recorded on that document to others in the jury deliberation  
19 room?

20 A. I don't believe so. I really believe I used that just as a  
21 sort of a guide for myself on how the two documents would work  
22 together.

23 Q. And do you recall how long it was that you referenced that  
24 indictment with your notes on it?

25 A. I am thinking I probably brought it in maybe two days. It

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1 could have been three. During that time we really began to get  
2 the hang of how to deal with those documents and I didn't need  
3 it any more so I didn't bring it in after that.

4 Q. You know that the Court provided you a copy of the  
5 indictment as part of the exhibits in this trial.

6 A. We did. I just found it difficult to really get a handle on  
7 it in the coming and going into the room with all the breaks and  
8 with all of us sitting around the table kind of -- you know,  
9 everybody looking at you trying to -- you know, there wasn't a  
10 lot of study time, and so that is what led me I guess to do what  
11 I did.

12 Q. I am not here to accuse you of doing anything improper, I  
13 just want to know what it was that took place. So other than  
14 looking on the Web site and looking at the role of the  
15 foreperson, and looking on the Court's Web site and getting a  
16 copy of the indictment, do you recall ever viewing or hearing  
17 any material from any books, newspaper, Internet sites or any  
18 other source relating to any witness, any legal issue or any  
19 factual issue in the case?

20 A. No.

21 Q. Those are the only two things you recall?

22 A. As far as I can recall today.

23 Q. And is it my understanding that you don't recall showing  
24 whatever it was you brought into the jury room with anyone, or  
25 sharing that with anyone?

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1 A. I recall using it myself, I don't recall any kind of  
2 discussions involved with that at all.

3 Q. Did anyone question you about any information that you may  
4 have had?

5 A. I don't remember anybody questioning me on that.

6 Q. During the time that you were serving as a juror did you in  
7 any way attempt to independently investigate any facts or law  
8 related to this case?

9 A. No.

10 Q. Other than what you have told me, assuming that that would  
11 fall within that category.

12 A. Nothing. Nothing more.

13 Q. During the time that you were serving as a juror did you  
14 overhear any conversations between persons not on the jury or  
15 between non-jurors and any member of the jury relating to this  
16 case?

17 A. No.

18 Q. During the time that you were serving as a juror did you  
19 view or hear any extraneous information about the penalty that  
20 might be applicable to any Defendant if he was convicted of the  
21 charges as set forth in the indictment?

22 A. No.

23 Q. During the time that you were serving as a juror did you  
24 obtain extraneous information from any source about your role as  
25 a juror, jury service generally, or your role as the foreperson

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1 of this jury?  
2 A. Yes.  
3 Q. And is that what you have already told me about?  
4 A. Correct.  
5 Q. Is there anything else that you looked at or researched  
6 other than what you have told me?  
7 A. No, those were the two things I really wanted to tell you  
8 about, I don't think there was anything further that I did.  
9 Q. During the time that you were serving as a juror did any  
10 other juror say or do anything that caused you to believe that  
11 he or she had been exposed to extraneous information about this  
12 case from any source?  
13 A. I believe another of the jurors had also located a copy of  
14 the indictment.  
15 Q. Do you recall that jurors' name? And if you would refer to  
16 her or him by juror number.  
17 A. That would be Juror Number 40.  
18 Q. And what was it that you recall being said about her having  
19 found a copy of the indictment?  
20 A. Nothing in particular, just that she had located a copy of  
21 the indictment and had -- I guess had read that.  
22 Q. Did she bring a copy of it with her into court?  
23 A. I never saw a copy.  
24 Q. Did she ever share the fact with anyone else other than you  
25 that she had brought a copy -- or that she had located a copy of

1 the indictment?  
2 A. It seems like that might have been said before the group as  
3 a whole, but I don't remember exactly.  
4 Q. Was there any time spent questioning what she had seen or  
5 commenting or asking her to explain what she had seen?  
6 A. I don't remember anything like that.  
7 Q. After she made that statement do you recall what, if  
8 anything, was said to her or asked of her by the other jurors?  
9 A. I really don't remember anything being said to her related  
10 to that.  
11 Q. To your knowledge did she appear to have been exposed to  
12 extraneous information about this case from any other source  
13 other than seeing a copy of the indictment?  
14 A. No, I have no reason to suspect that.  
15 Q. Did she ever discuss any other document or any other  
16 research that she had done other than her locating a copy of the  
17 indictment?  
18 A. I don't remember any kind of discussion like that.  
19 Q. During the time that you were serving as a juror did you  
20 view or hear any extraneous information about either the law  
21 applicable to this case or any factual material relating to this  
22 case?  
23 A. I don't believe so, other than the things I have already  
24 talked about.  
25 Q. You brought some documents with you today that were required

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1 of you from that subpoena; is that correct?  
2 A. Yes.  
3 Q. Show me what you have, please.  
4 A. (complies)  
5 Q. All right. This is an 11 page document. I would ask that  
6 it be marked as Court's Exhibit 10-A.  
7 THE CLERK: (complies)  
8 Q. All right. Juror Number Seven, I am going to hand it back  
9 to you (complies) and ask you if would you tell us what that  
10 is.  
11 A. This is a printout of a document called juror information,  
12 which was from the United States District Court -- Middle  
13 District Court of Alabama Web site.  
14 Q. And is that what you said you looked at after you were  
15 selected as the foreperson in this case?  
16 A. Well, because I did not keep the original item that I had  
17 looked at and didn't print it out I can't say for sure this is  
18 the exact thing I looked at. And I went to do a search again  
19 the other day to be able to print something and bring it in, and  
20 I don't know exactly what I looked at. When I read the --  
21 Q. Let me ask you this question, unless the Court has changed  
22 that Web site is that information the same as what you looked at  
23 sometime in the summer months of 2006?  
24 A. It well could be.  
25 Q. What about that information or that packet of information

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1 did you review?  
2 A. I scanned down through it to get to the part where it talked  
3 about the role of the jury foreperson.  
4 Q. And is that contained in that exhibit?  
5 A. It is.  
6 Q. Would you flip to the pages of that exhibit that the  
7 information that you reviewed is contained on.  
8 A. Okay.  
9 Q. If you would, read for the Court what it was that you  
10 reviewed that would be considered extraneous evidence in your  
11 service as a juror.  
12 A. Okay. In this District jurors elect a foreperson. The  
13 foreperson presides over the jury's deliberations and must give  
14 every juror a fair opportunity to express his or her views.  
15 Q. Do you recall reading or printing off either parts of that  
16 document?  
17 A. I recall reading words essentially to that effect.  
18 Q. Do you recall ever printing that part of that section of the  
19 Web site off?  
20 A. I don't remember printing it out.  
21 Q. And why did you print it out this time?  
22 A. Well, it was in the instructions to bring it along.  
23 Q. Okay. Also it had a requirement that you bring any other  
24 exhibits that you may have had, and one of which you have  
25 referred to as a copy of the indictment. Did you attempt to

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1 print a copy of the indictment off after you said you threw or  
2 discarded your one that you used?  
3 A. I did attempt to find it and as I went to the Court's Web  
4 site I could not locate it, so I just didn't find one.  
5 Q. So if the Court has removed that from the Web site would  
6 that explain why you couldn't see it?  
7 A. That was what I figured must have happened.  
8 Q. Okay. Do you have any other documents or any other  
9 materials that you believe would be considered extraneous  
10 evidence or outside influence that either you participated in or  
11 you observed from any other juror who deliberated in this case?  
12 A. No.  
13 Q. Thank you for coming, sir. I know it's been a drive for  
14 you. I appreciate your time. If you would leave with us that  
15 exhibit. There are no other exhibits that you indicated that  
16 you brought with you; is that correct?  
17 A. That's it. I couldn't find the others.  
18 Q. And the only other one would be the copy of the indictment.  
19 A. Correct.  
20 Q. With that being said you may step down and you are free to  
21 go.  
22 A. Thank you.  
23 MR. LEACH: Your Honor, before that juror leaves I have  
24 one point I would like to bring to your attention if I could,  
25 please, sir.

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1 Q. I know you are kind of soft spoken so I would ask that you  
2 adjust that microphone and speak into it so we can all hear  
3 you. Again, we are not here to embarrass you at all but merely  
4 to follow up on some information that has been brought to the  
5 Court's attention. And I would ask if any question I ask of you  
6 requires that you provide the name of another juror by their  
7 name, if you would use their juror number as opposed to their  
8 name. There's a list of their names and numbers in front of  
9 you. Before we get started let me ask you if you would look at  
10 what has been marked as Court's Exhibit Number 11, it's that  
11 document right there. Do you recall seeing that before today's  
12 date?  
13 A. Yes, I believe so.  
14 Q. That actually is the original --  
15 A. Yes.  
16 Q. -- subpoena that was served upon you by the United States  
17 Marshal Service for you to appear in court today. Did you  
18 receive this?  
19 A. Yes.  
20 Q. Did you read it or did someone read it to you, Juror Number  
21 Five?  
22 A. Yeah, someone read it to me.  
23 Q. Okay. And did they read all parts of it to you?  
24 A. Yes.  
25 Q. Did they read the part where it reads you are also commanded

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1 THE COURT: Is it any different than what you have just  
2 brought up?  
3 MR. LEACH: Yes, sir. In order to access the  
4 indictment in this case I believe the jurors would have had to  
5 have a PACER account. I would like for you to inquire about  
6 that.  
7 THE COURT: I will tell you as a matter of fact that  
8 that is not the case. This indictment was originally put on the  
9 Middle District of Alabama's Web site as a link.  
10 MR. LEACH: As a link?  
11 THE COURT: As a link. And it was taken down at the  
12 conclusion of the trial after I gave instructions to take it  
13 down. Juror Number Five.  
14 THE CLERK: Raise your right hand. You do solemnly  
15 swear or affirm that the testimony you give in this cause to be  
16 the truth, the whole truth, and nothing but the truth, so help  
17 you God.  
18 THE WITNESS: I do.  
19 THE CLERK: You may be seated.  
20 JUROR NUMBER FIVE, witness called by the Court,  
21 having been duly sworn or affirmed, testified as follows:  
22 EXAMINATION  
23 BY THE COURT:  
24 Q. Good afternoon, sir.  
25 A. Good afternoon.

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1 to bring with you the following documents or objects? And it's  
2 a quite lengthy list of things for you to bring if you have  
3 copies of them.  
4 A. Yes.  
5 Q. Do you have any copies of documents that are described in  
6 this subpoena?  
7 A. No.  
8 Q. All right. I am going to ask you a few questions. And  
9 again, I would remind you if it requires you to respond with a  
10 juror's name that you give me their number. And I apologize for  
11 being so informal but I will continue to refer to you by your  
12 juror number so that it can protect your privacy as well as the  
13 privacy of others. Did anyone other than another juror try to  
14 influence your thinking about this case or your vote on the  
15 substantive counts against any Defendant?  
16 A. No.  
17 Q. Do you have any reason to believe that any other person --  
18 I'm sorry, that any other juror was subjected to attempts to  
19 influence his or her thinking about the case by anyone other  
20 than another juror?  
21 A. No.  
22 Q. Did anyone other than another juror attempt to discuss this  
23 case with you during the time you were a juror in this case?  
24 A. No.  
25 Q. During the time that you were serving as a juror did you

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1 view or did you hear any news reports or other information  
2 relating to this case or any Defendant in this case from sources  
3 such as newspapers, magazines, radio, or television broadcasts  
4 or any Internet sites?  
5 A. No.  
6 Q. During the time that you were serving as a juror did you  
7 view or did you hear any material from any books, newspapers,  
8 Internet sites, or any other source relating to any witness, any  
9 legal issue or any factual issue related to this case?  
10 A. No.  
11 Q. During the time that you were serving as a juror did you in  
12 any way attempt to independently investigate any facts or law  
13 relating to this case?  
14 A. No.  
15 Q. During the time that you served as a juror did you overhear  
16 any conversations between persons not on the jury or between  
17 non-jurors and any member of the jury relating to this case?  
18 A. No.  
19 Q. During the time that you were serving as a juror did you  
20 view or hear any extraneous information about the penalty that  
21 might be applicable to any Defendant if he was convicted of the  
22 charges in this case?  
23 A. No.  
24 Q. During the time that you were serving as a juror did you  
25 obtain any extraneous information from any source about your

1 role as a juror, about jury service generally, or about the  
2 service of the foreperson to this jury?  
3 A. No.  
4 Q. During the time that you were serving as a juror did any  
5 other juror say or do anything that caused you to believe that  
6 he or she had been exposed to extraneous information about this  
7 case from any source?  
8 A. No.  
9 Q. Let me make sure that I understand your response. You are  
10 saying -- and let me ask it again. At any time after you served  
11 as a juror in this case, did anyone either say anything to you  
12 during your deliberation or show anything to you during your  
13 jury deliberations that you believed they had received from  
14 either documents or research or exhibits outside of what the  
15 Court provided to the jury to look at during its deliberative  
16 process?  
17 A. Yes.  
18 Q. All right. Tell me first of all who by number had that  
19 information in the jury room.  
20 A. 16.  
21 Q. Juror Number 16?  
22 A. Okay. Well. No, 40.  
23 Q. Juror Number 40. Tell me what Juror Number 40 had in the  
24 jury room that you would consider extraneous evidence.  
25 A. I didn't see it. It wasn't nothing that she had, it was

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1 just what she -- what was said about what went on. Someone said  
2 that -- about amount of knowledge she had of the trial, that she  
3 must have been on the Internet or something. And she said that  
4 she went on the Internet to look up a book.  
5 Q. She went on the Internet and looked up a book?  
6 A. The book for the foreman when we first started deliberating.  
7 Q. And she said she found that foreman's book on the Internet?  
8 A. Yes.  
9 Q. Did she say anything about having looked up the  
10 indictment --  
11 A. No.  
12 Q. -- on the Internet?  
13 A. That was all she said she did.  
14 Q. And tell me again what it was she said she did.  
15 A. She looked -- she went on the Internet to find the book that  
16 you had gave the foreman. The book you had gave the foreman  
17 when we retired to the --  
18 Q. Was a copy of the book that was provided to the foreman  
19 eventually made for each of the jurors in the case?  
20 A. Yes.  
21 Q. And to your knowledge did that information that was provided  
22 to you individually that the foreman had initially, was that a  
23 complete copy of what she said that she had received or reviewed  
24 from the Internet?  
25 A. Well, that was all that was said about it, that she went on

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1 there to see what it was -- what was in the book, because at the  
2 time we didn't have but one copy and she just went in there to  
3 look at that book.  
4 Q. Okay. Do you recall when that was?  
5 A. Well, it was before you gave us all a copy.  
6 Q. So it was after you started deliberating --  
7 A. Yes.  
8 Q. -- but before you had a copy of all the exhibits for  
9 yourself?  
10 A. It didn't come out until after we all had a copy before it  
11 came out.  
12 Q. Okay. And do you recall what she said about what she had  
13 seen other than she had gone on the Internet and found a copy of  
14 this foreman's book?  
15 A. That's all she said she had done.  
16 Q. Did she describe with any of the members of the jury  
17 particularly what she had looked at?  
18 A. No, she just said she looked at the book you gave the  
19 foreman.  
20 Q. Okay. Is that what caused the rest of the jury to want a  
21 copy of the foreman's book?  
22 A. No, this was -- this was after we had gotten the foreman's  
23 book. I am talking about she had did it before then, but it  
24 didn't come out until after we had gotten the book. Someone had  
25 said about the knowledge that she had of what was going on and

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1 stuff that she must have went on the Internet or something.  
2 Q. Did you ever see her bring any copies of papers into the  
3 jury room?  
4 A. No.  
5 Q. And other than her admitting that she had looked at a copy  
6 of what you have classified as the foreman's book, are you aware  
7 of her seeing anything else from any outside source or any  
8 extraneous information?

9 A. No.  
10 Q. Are you aware of any other person looking at any extraneous  
11 information or being exposed to extraneous information?  
12 A. No.

13 Q. During the time that you were serving as a juror did you  
14 view or hear any extraneous information about either the law  
15 applicable to the case or any factual material relating to this  
16 case?

17 A. No.

18 Q. And other than Juror Number 40 saying that she had looked at  
19 the jury foreman book, did anyone else ever indicate to you  
20 during your service as a juror that they had either heard  
21 anything on the radio, seen anything on television, read any  
22 news reports of any kind either on the Internet or in newspapers  
23 or in magazines about this trial or any person who was accused  
24 as a Defendant in this trial?

25 A. No.

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1 Q. Thank you, sir. I appreciate you coming today. You may  
2 step down and you are excused.

3 THE COURT: Number 68.

4 THE CLERK: Raise your right hand. You do solemnly  
5 swear or affirm that the testimony you give in this cause to be  
6 the truth, the whole truth, and nothing but the truth, so help  
7 you God.

8 THE WITNESS: I do.

9 THE CLERK: You may be seated.

10 JUROR NUMBER 68, witness called by the Court,  
11 having been duly sworn or affirmed, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q. Good afternoon.

15 A. Hi.

16 Q. I am going to ask that you scoot yourself up to the  
17 microphone and adjust the microphone as you need to so that you  
18 can answer the questions that I ask of you. I will be the only  
19 one asking you questions today. Don't be nervous, we are not  
20 here to embarrass you or to intimidate you in any fashion. No  
21 one is going to be in any trouble today, I just want you to tell  
22 us what you know about the questions I am going to ask you.

23 A. Yes, sir.

24 Q. I am going to start off by asking that you look at Court's  
25 Exhibit Number 12 which is in front of you. Have you ever seen

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1 that document before today's date?

2 A. Yes, sir.

3 Q. Is that the original subpoena that was served upon you for  
4 your appearance as a witness in this hearing today?

5 A. Yes, sir.

6 Q. Did you read that subpoena before coming to court today?

7 A. Yes, sir.

8 Q. Did you read the part that particularly required you to  
9 bring documents and objects, a further description is included  
10 in that subpart of this subpoena, if they were in your  
11 possession?

12 A. Yes, sir.

13 Q. Do you have any such documents in your possession?

14 A. No, sir.

15 Q. All right. I am going to ask you some questions, and I am  
16 going to refer to you by your juror number which is Number 68.

17 I apologize for being so informal, I know you put in a lot of  
18 time in this case already, but out of an abundance of precaution

19 I want to make sure that your anonymity is protected as well as  
20 that of the other jurors in this case. So any question that I

21 ask that would require that you respond about any information  
22 that would include the name of another juror if you would refer

23 to them by their juror number. I will ask you a few questions,  
24 it will be ten or 11 questions. Did anyone other than another

25 juror try to influence your thinking about this case or your

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1 vote on the substantive counts against any Defendant?

2 A. No, sir.

3 Q. Do you have any reason to believe that any other juror was  
4 subjected to attempts to influence his or her thinking about the  
5 case by anyone other than another juror?

6 A. No, sir.

7 Q. Did anyone other than another juror attempt to discuss the  
8 case with you during the time you served as a juror in this  
9 case?

10 A. No, sir.

11 Q. During the time that you were serving as a juror did you  
12 view or did you hear of any news reports or other information  
13 relating to this case or to any Defendant from sources such as  
14 newspapers, magazines, radio or television broadcasts or  
15 Internet sites?

16 A. No, sir.

17 Q. During the time that you were serving as a juror did you  
18 view or did you hear any material from any books, newspapers,  
19 Internet sites or any other source relating to any witness, any  
20 legal issue or any factual issue related to this case?

21 A. No, sir.

22 Q. During the time that you were serving as a juror did you in  
23 any way attempt to independently investigate any facts or law  
24 relating to this case?

25 A. No, sir.

1 Q. During the time that you were serving as a juror did you  
2 overhear any conversations between persons not on the jury or  
3 between non-jurors and any member of the jury relating to this  
4 case?  
5 A. No, sir.  
6 Q. During the time that you were serving as a juror did you  
7 view or hear any extraneous information about the penalty that  
8 might be applicable to any Defendant if he was convicted of the  
9 charges contained in the indictment?  
10 A. No, sir.  
11 Q. During the time that you were serving as a juror did you  
12 obtain any extraneous information from any source about your  
13 role as a juror, your jury service generally, or the role of a  
14 foreperson on the jury?  
15 A. No, sir.  
16 Q. During the time that you were serving as a juror did any  
17 other juror say or do anything that caused you to believe that  
18 he or she had been exposed to extraneous information about this  
19 case from any source?  
20 A. No, sir.  
21 Q. All right. You hesitated, is there something you want to  
22 tell me?  
23 A. Well, the only thing that -- the only thing that I heard or  
24 that I remember was that I believe it was Number Seven read  
25 something about how to go about what we were doing.

1 Q. Do you know if that was part of the Court's instructions to  
2 you as the jury or do you think that he got that from some site  
3 or some source outside of what the Court had given you?  
4 A. I don't know how it came about, I just know that he was  
5 worried about what we were doing and, you know, wanted to know  
6 how to better go about being the foreman.  
7 Q. Do you know when that happened?  
8 A. No, sir, I don't.  
9 Q. Was it early on in the deliberative process?  
10 A. It would have had to have been very early on into it.  
11 Q. After you began deliberating. You deliberated nine days in  
12 this case.  
13 A. Yes, sir.  
14 Q. Do you recall if it was towards the first part of your  
15 deliberation?  
16 A. I don't recall. I just know that, you know, I had heard  
17 that. He was worried about, you know, being the foreman and  
18 wanted to do it to the best of his ability.  
19 Q. Did he bring anything into the jury room?  
20 A. No, sir. Not that I am aware of, no, sir.  
21 Q. You would have to be aware of it or somebody would have to  
22 tell you about it, I am asking you if --  
23 A. No. I never saw anything, no.  
24 Q. Did you ever talk with anyone who had indicated that they  
25 had seen something that was brought into the jury room?

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1 A. No, sir.  
2 Q. How much time did he spend telling the other 11 of you that  
3 he had looked up what his role of foreperson was?  
4 A. Not very much time at all. He just stated that he was --  
5 you know, wanted to do a good job at what we were doing and that  
6 he just wanted to know, you know, what a foreman done.  
7 Q. Can you give me an estimate about how much time you spent or  
8 he spent making that statement to the jury?  
9 A. Maybe three minutes, four minutes maybe.  
10 Q. Was there anyone else that you believe had been exposed to  
11 extraneous information about this case from any source?  
12 A. No, sir.  
13 Q. During the time that you were serving as a juror did you  
14 view or hear any extraneous information about either the law  
15 applicable to this case or any factual material relating to this  
16 case?  
17 A. No, sir.  
18 Q. And to your knowledge did anyone bring any information into  
19 that jury room, either in printed form or tell anyone about what  
20 they had seen or read outside of the Court's instructions to the  
21 jury was?  
22 A. No, sir.  
23 Q. Thank you, ma'am. You may step down and you are free to  
24 go.  
25 A. Thank you.

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1 THE COURT: If either side wishes to put any objections  
2 on the record, those are all the witnesses the Court has  
3 subpoenaed to testify today. I will begin with the United  
4 States, if you have any statement or objections you wish to  
5 lodge for the record, please approach the podium.  
6 MR. FEAGA: Your Honor, none that we haven't already  
7 addressed with the Court.  
8 THE COURT: You don't need to argue the motion, I am  
9 just here to hear what you have as an objection. Anything from  
10 Governor Siegelman?  
11 MR. MCDONALD: Your Honor, I am not sure how you want  
12 us to handle this. I don't think Your Honor wants to hear a  
13 list of questions that we would have asked, or maybe you do, I  
14 am asking for some direction.  
15 THE COURT: If you have any objections to anything I  
16 didn't ask, this is your chance to preserve it for the record.  
17 If you have any objections to how the Court conducted the  
18 hearing after the fact, this is your opportunity to put that on  
19 the record.  
20 MR. MCDONALD: Well, with Your Honor's indulgence,  
21 thank you. As regards -- I would like to take a couple of  
22 minutes and talk about the questioning of a couple of the jurors  
23 and just outline areas that we felt should have been explored in  
24 a little greater detail and just give a brief basis for our  
25 rationale. Juror Number 66 discussed -- she started to talk

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1 about at some point in time that there was a conversation had  
2 with Juror Number Seven, and the language that she used was  
3 right after as I recall the original deadlock. And I -- she --  
4 it led me to believe that it was right after Your Honor had  
5 given the first Allen charge. And then during the course of her  
6 testimony right then she went back to talking about a  
7 conversation that Juror Number Seven initiated when he was  
8 talking about his duties as the jury foreman. And that was the  
9 time, Your Honor, when she was finished and I stood up and asked  
10 for a side bar because I thought it was quite important that  
11 timing is very critical in this case from the Defendant's  
12 perspective as to when some of this -- we obviously have  
13 different testimony, contradictory testimony from these jurors  
14 about extraneous evidence coming in to the juror deliberations.  
15 From Governor Siegelman's perspective it becomes even more  
16 important as to the timing of that extrinsic evidence coming  
17 in. I wanted to clarify that with Juror Number 66.

18 THE COURT: Anything else?

19 MR. MCDONALD: Yes. As regards Juror Number 40, there  
20 were lots of questions that came to mind during Your Honor's  
21 examination of this particular juror. One overwhelming question  
22 that I couldn't get out of my mind was how was it this  
23 particular juror knew to go to the Middle District's Web site to  
24 download the indictment. What was the thought process there.  
25 What searches were conducted before realizing that the

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1 indictment would be at the Middle District's Web site. It  
2 seemed odd to me that a layman would -- in searching for a  
3 written indictment on the Internet would know to go directly to  
4 the Middle District, know to go directly to the particular  
5 portion on that page to find the indictment. And then the next  
6 question is, what else was read on there. We did search during  
7 lunch. Of course, we couldn't find it. It makes -- I  
8 understand now that Your Honor had it taken down, I don't have  
9 a picture today of what the Middle District's Web site looked  
10 like at the time, but what the general instructions on the Web  
11 site that we saw today indicates that there are rulings of the  
12 Court available on that Web site. So, the questions that we  
13 would like to ask more specifically during her search of the  
14 Middle District Web site was did she even see or run across any  
15 of Your Honor's rulings regarding this matter while she was  
16 looking for the indictment.

17 THE COURT: Let me see if I can answer that for you.  
18 On the Middle District's Web site, the external Web site, which  
19 is the only thing people outside of this courthouse have access  
20 to, there was a link to the indictment. Actually it was the  
21 second superseding indictment that was served upon all four  
22 Defendants that were tried in this case. That's the only  
23 document that was on that Web site. There were no other orders  
24 other than a PACER account that a person would have to have.  
25 But that was on the front page as a link. On a juror summons in

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1 this District the juror gets their questionnaire, and on that  
2 questionnaire it has the Court's Web site as a link so that they  
3 can look up other information that's a part of what I received  
4 from Juror Number Seven. It has other information about how you  
5 park, how you get paid for parking and those kinds of things.  
6 So, that information is contained on that Web site as well and  
7 they are directed to look at that from the questionnaire.

8 MR. MCDONALD: I see.

9 THE COURT: So I am not saying that's what happened, I  
10 am just saying that's a plausible explanation.

11 MR. MCDONALD: Right. Thank you. Along the line of  
12 when we are talking about the indictment with Juror Number 40,  
13 the other thing that came to mind was Your Honor asked a couple  
14 of questions about if it differed between what she saw and what  
15 the Court had given. We got some little bit of different  
16 answers. My issue with that, Your Honor, is, of course, that  
17 the indictment was different that was given to the jury on the  
18 very critical issues from what was on the Web site at the time,  
19 I believe, which was the second superseding indictment. And, of  
20 course, Your Honor dismissed two counts against Mr. Scrushy and  
21 Governor Siegelman before --

22 THE COURT: I actually made the government elect  
23 between two counts, one in count three and one in count four.

24 MR. MCDONALD: Yes, I'm sorry, I misspoke. But the  
25 point I am getting to, of course, is that now we do have two

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1 jurors, Number 40 and Number Seven, who have downloaded and  
2 studied indictments that are substantially different than the  
3 indictments that actually went to the jury. And those types of  
4 questions I would have requested Your Honor to explore in  
5 greater detail because that is a significant issue for us to be  
6 addressing before the 11th Circuit.

7 Quickly, still on Juror Number 40, there were other  
8 jurors who mentioned that Juror Number 40 had indicated that she  
9 at least knew that there was a daily record of the trial on the  
10 Web. Juror Number 30 testified to that. I would have requested  
11 Your Honor to ask a few more follow-up questions with Juror  
12 Number 40 to either confirm or deny those types of conversations  
13 that Juror Number 30 testified about.

14 Back to Exhibit 6-A, which is the indictment that Juror  
15 Number 40 brought in. We wanted to know whether this was the  
16 only copy of the indictment that Juror Number 40 ever had. If  
17 this was actually the one that she had made notes on. If she  
18 did make notes, were they on a separate document or what had  
19 happened with that. Because I thought -- and, of course, it  
20 gets a little bit blurry when folks are testifying, I don't know  
21 how Jimmy gets everybody's testimony down because I am trying to  
22 write as fast as they are talking -- but I thought I understood  
23 some jurors to testify that they had seen some documents with  
24 some handwriting on them. And I wasn't clear and would have  
25 liked to have made clear with Juror Number 40. We, of course,

1 don't have a copy of 6-A, Your Honor does in front of you,  
2 whether there are handwritten notes on that document or whether  
3 at the time that she had it did she make handwritten notes and  
4 what happened to those notes.

5 Just for the record, I think that there have been  
6 motions filed -- I know there have been motions filed under  
7 seal. Your Honor ruled on them. I think the Court's order is  
8 still clear that either party doesn't have to come forward and  
9 formally adopt them, I think Your Honor still automatically  
10 assumes that we are adopting each other party's motions; is that  
11 correct?

12 THE COURT: I don't understand what you mean by  
13 adopting each other's motions.

14 MR. MCDONALD: I want to make clear for appellate  
15 purposes that Governor Siegelman has adopted the motions filed  
16 by Mr. Scrusy's counsel under seal so that there's no issue  
17 that we -- whether we did or we didn't. Back when we were  
18 discussing post-trial motions I thought the Court had entered  
19 into an agreement with the parties that no formal adoption had  
20 to be made to protect our record on appeal on those issues.

21 THE COURT: I believe your original Motion for New  
22 Trial under Rule 33 was filed in this Court's mind as a joint  
23 motion.

24 MR. MCDONALD: Yes, Your Honor. Subsequently there  
25 were motions filed independently by Governor Siegelman and by

1 Mr. Scrusy, and then, of course, there were motions that were  
2 filed under seal, and I want to make clear for the record if  
3 it's not clear already in the Court's prior instructions that  
4 Governor Siegelman did adopt those motions that were filed under  
5 seal by Mr. Scrusy.

6 THE COURT: I will give you leave to file that document  
7 no later than the 27th if you wish to articulate for the record  
8 which exhibits that were filed, either filed without being  
9 placed under seal or placed under seal by their document number,  
10 as being adopted by your client.

11 MR. MCDONALD: Thank you. And again, as for appellate  
12 purposes, I think we have made it clear but I want to make  
13 sure. As regards Juror Number 40 and some of the other jurors,  
14 we would have asked at least to authenticate any e-mails that  
15 could be attributed to them. Because as I understand Your  
16 Honor's order you are taking these issues in steps. We had a  
17 hearing a couple of weeks ago on Juror Number Five, we had this  
18 hearing today, I think Your Honor's order was clear that you  
19 wanted to take this step and you made it clear that you did not  
20 want to get into the other issues with the e-mails and that's  
21 why we haven't made numerous objections throughout the course of  
22 the proceeding. But I want to make clear, number one, that we  
23 are preserving our objection. We do believe that at this point  
24 in time when we had all the jurors here would have been the best  
25 time to at least attempt to authenticate the e-mails that have

1 been presented to us that have been the basis for our Motion for  
2 New Trial. And also to reiterate --

3 THE COURT: Don't you think that this also -- I mean  
4 the questions that the Court asked today would have included any  
5 content that would have been included on any of those e-mails  
6 whether or not the e-mails themselves were authenticated?

7 MR. MCDONALD: Yes, and that's exactly where I am  
8 going, Your Honor. One e-mail that comes to mind in particular  
9 is when there's some purported discussion about the sentencing,  
10 and, Your Honor, I think it's clear what Your Honor was doing,  
11 you asked whether there were any discussions about that. The  
12 next question for us to satisfy authentication purposes would be  
13 for us to at least confirm or deny from each of the jurors what  
14 their -- whether any of these e-mail addresses belong to them.  
15 Because that does create an issue that at that point in time  
16 either what we have is bogus e-mails or we potentially have some  
17 folks who don't remember e-mails that were sent or we have some  
18 testimony that may conflict with the evidence that has been  
19 presented to the Court. At this point in time we don't have any  
20 authentication of the e-mails, and I want to reiterate our  
21 request that the Court go ahead and try to authenticate them.

22 Finally, as regards Juror Number 40, we respectfully  
23 request the Court to have -- I understand Your Honor has many  
24 different issues in front of it. There's some pending issues,  
25 the Defendants' Sixth Amendment right, there's the right of the

1 jury to render a verdict and move on, but a preeminent  
2 importance to the Court should be the Sixth Amendment right of  
3 the Defendants at this stage to have received a fair trial. I  
4 would have requested Your Honor to ask of Juror Number 40, or at  
5 least confront Juror Number 40 with testimony from other jurors  
6 such as 66 and 30 and, of course, I think Number Five testified  
7 later, but to at least give Juror Number 40 an opportunity to  
8 refute any of that testimony or explain as best Juror Number 40  
9 could how -- reconcile how that testimony could coincide with  
10 the testimony that she rendered today. One moment, please, Your  
11 Honor.

12 Just one -- as one final matter, Your Honor. The best  
13 evidence that we would have as to whether there are  
14 deliberations occurring outside the jury room, other than the  
15 testimony that we have today, is to have obtained some form of  
16 information from the actual computers of the jurors.

17 THE COURT: And you think that's grounds for a new  
18 trial.

19 MR. MCDONALD: Yes, Your Honor. And I would like -- if  
20 I could just briefly explain that. I think it is incorrect at  
21 legal -- it is legally incorrect to lump deliberations that  
22 occur outside of the juror room as deliberations. I don't  
23 believe they constitute legal deliberations. Particularly  
24 conversations that were occurring in the e-mails that were  
25 mailed several weeks before the case was ever given to the

1 jury. Those are not deliberations. Those are indications that  
2 the Defendants' Sixth Amendment right had been deprived. And  
3 the only way I believe to reconcile the testimony that Your  
4 Honor had today is to take a look at either the ISP providers as  
5 has already presented to the Court, or to the computers that we  
6 have requested be at least obtained by the Court, not  
7 necessarily disclosed to us at this juncture, but at least to  
8 retain this evidence so that it is preserved in a manner that  
9 could be revisited at some other time. Thank you.

10 THE COURT: Anything from Mr. Scruschy?

11 MR. LEACH: Yes, sir. Judge, our number one objection  
12 is that we believe that there is a world of either corroboration  
13 or impeachment out there which the Court has denied via our  
14 sealed motion which we have submitted to the Court and our prior  
15 motions to the Court to gather that information. Our objective  
16 here is to ascertain what extrinsic evidence is out there and  
17 presented to the jury. We suggest that by getting the ISP  
18 providers and other sources that we outlined in our motion and  
19 in our prior public filings the Court would know what  
20 information was out there and downloaded and could ask -- you  
21 could then question the jurors whether that information was  
22 something that was -- that the rest of the jury was exposed to.  
23 So we object, procedurally, to the fact that the Court did not  
24 conduct that investigation prior to questioning the jurors  
25 here.

1 Judge, with regard to Juror Number Five we would ask  
2 that you bring him back and ask him questions because I think  
3 today he was struggling to understand the Court's questions. I  
4 think the Court I am sure can remember his prior testimony, and  
5 I think that both in the public portion of his prior testimony  
6 and in the portion of the testimony that was taken in chambers,  
7 I think the Court endeavored to make it where Juror Five  
8 understood exactly what the Court was looking for. I think he  
9 was struggling here today and I would ask that you bring him  
10 back and ask him to -- walk him through his affidavit as you  
11 have in the past, Judge. And you asked him on prior occasions  
12 both publicly and in chambers whether his affidavit was accurate  
13 and he has told you in the past that it was, and I just -- I  
14 wonder, Judge, if the issue here isn't more related to an  
15 understanding of where the Court was going and what the Court's  
16 meaning was.

17 Judge, we ask that each of the jurors be asked in  
18 chambers what e-mail addresses they used during the trial of the  
19 case, and what computers they utilized during the course of the  
20 case. As the Court knows through the sealed portions of our  
21 filings there are e-mail addresses that remain unascertained  
22 right now. I know Your Honor was pointing towards the e-mails  
23 that have to do with the penalty being too severe. We -- I  
24 believe I know one side of that communication, I do not know the  
25 other side of that communication which juror was involved in

1 that. I think whoever that juror is, once it is ascertained,  
2 that juror ought to be asked directly about that e-mail  
3 communication.

4 And I do understand, Judge, that you did not want to  
5 broadly get into the e-mails, but that particular e-mail is  
6 something that you did take up today and I just think whoever  
7 that juror is is someone who should be asked about what was  
8 going on in that line of e-mails.

9 THE COURT: If it's a juror. If it even is a juror.  
10 It could be a person that was not on the jury.

11 MR. LEACH: You know, I just don't know, and until we  
12 ask those questions of the jurors, you know, in terms of what  
13 e-mail addresses they were using. I think, if I remember that  
14 line of e-mails correctly, Judge, I think there's more  
15 references down the line that indicate that it would have been  
16 another juror. But maybe I am wrong about that. There's a lot  
17 of material that we have submitted to you.

18 Judge, specifically I believe Juror 40, if I am not  
19 mistaken, is one side of that e-mail communication, and the  
20 Court did not directly confront that juror about that e-mail.  
21 In other words, is it authentic? Is it not authentic? If it is  
22 authentic, what was going on there? What was the nature of that  
23 communication? Who were you communicating with? I would ask  
24 that you bring that juror back and have that line of questioning  
25 with the juror.

1 Judge, this morning I believe, and my count may be  
2 wrong, but I believe four out of six jurors confirmed that they  
3 knew that Internet searches were discussed before the jury. I  
4 may be wrong in that number but I think it was four out of six.  
5 Based upon that showing alone I think because the jurors are  
6 indicating that those Internet searches are consistently with I  
7 believe two jurors in this case, the Court should at a minimum  
8 subpoena the ISP providers and try to get the search trails  
9 during the course of the case in order to determine what was  
10 searched, what was downloaded, and what the potential universe  
11 is of information that could have been presented to the jury. I  
12 suggest respectfully, Your Honor, that the Court can not fully  
13 evaluate what information the jury was exposed to without  
14 knowing what information was out there that could have been  
15 presented to them by the only two jurors that appears that were  
16 doing those kind of searches.

17 Judge, I also suggest that the overall questioning from  
18 the Court in one respect misses the focus of what we are doing  
19 here. And I suggest respectfully, Judge, that it's not just  
20 about what extraneous information two jurors may have received  
21 and downloaded and carried into the jury room. I think another  
22 part of what you have to look at, Judge, is what extraneous  
23 information did those jurors pull down and assimilate and then  
24 carry in, whether there was paper or not. And that's why I  
25 think it's important to know through ISP providers or through

1 the other methods that we outlined in our motion that you know  
2 what information was out there, downloaded, how frequently was  
3 it downloaded, and then you can ask the jurors did that  
4 information ever come into the discussions, did that affect your  
5 deliberative process.

6 THE COURT: I don't think I can even ask the question  
7 that affected their deliberative process, can I?

8 MR. LEACH: If it's extraneous, Judge.

9 THE COURT: I can ask what extraneous information they  
10 had available to them, how long they considered it, and then I  
11 have to make an objective determination of whether or not in  
12 this Court's opinion it could have affected a reasonable juror.  
13 I am prohibited specifically by the 11th Circuit from even  
14 asking the direct question did it have any impact on your  
15 deliberations. Would you disagree with that?

16 MR. LEACH: I don't disagree with that, but the point  
17 that I am trying to make, Judge, is volume is important. And  
18 one of the things that is discussed by I think it's Juror 66 for  
19 sure, and perhaps others, is that there was talk about the fact  
20 that the case was being reported on a daily basis. And one of  
21 the things that I think you would find by going through the ISP  
22 providers or the other methods that we discussed in our motion  
23 is you would see if that kind of volume, in other words that  
24 kind of daily contact with extraneous information was  
25 occurring. And if it was, you could then make further inquiry

1 as to what effect it might have had on the deliberative  
2 process.

3 Judge, Juror 66 testified that Juror Seven pulled  
4 materials out of his pocket. And to determine prejudice we have  
5 to learn as a threshold matter what each juror saw on the  
6 Internet, how much material was downloaded, what material was in  
7 the pocket, and what material was presented to the Court. I can  
8 see by the nature of the Court's questioning that your  
9 conclusion is directed towards the indictment, but without  
10 knowing what the universe of downloaded material is, we will  
11 never know whether the indictment is the correct answer or if  
12 there were other materials made available to Juror Seven or  
13 Juror 40.

14 Judge, we would respectfully ask that you ask the  
15 jurors whether there had been any contact with them leading up  
16 to their testimony in this proceeding. And I don't mean to  
17 indicate that there was anything inappropriate there. I just --  
18 you know, jurors, they know each another, they are friends with  
19 each other and I just think there ought to be a questioning  
20 about whether they have had contact with each other leading up  
21 to this proceeding.

22 I believe there is a conflict which needs to be  
23 clarified with regard to Juror 66, Judge. If I am not mistaken  
24 Juror 66 testified that Juror 40 conducted research on the  
25 Internet and that she had notes on a copy of the indictment in

1 the jury room. I am not sure the Court ever ascertained -- and  
2 Judge, we haven't seen your exhibit so, you know, you may have  
3 this answer right there in front of you -- but I don't know that  
4 it's ever been ascertained whether the notes are present here.  
5 And what the note -- the contents of those notes were and  
6 whether they were made available to the other jurors, and  
7 whether that included information that was extraneous to the  
8 case or not.

9 I believe I mentioned earlier, Judge, about the daily  
10 reporting. The other juror I think who talked about that was  
11 Juror 30, testified that Juror Seven accessed the Internet and  
12 told Juror 30 that there was daily reporting of the case.  
13 Again, I would suggest to Your Honor that this supports that a  
14 reasonable investigation into the Internet activity of Juror  
15 Seven and Juror 40 is called for in order to ascertain the  
16 universe of Internet contacts with extraneous information during  
17 the case.

18 Judge, Juror 66 testified that Juror Seven looked up  
19 information on the Internet relating to a Defendant that was  
20 acquitted. And if I recall this testimony correctly, it had to  
21 do with the personal employment history of that person, which  
22 would lead me to believe that it probably would be talking about  
23 Mack Roberts. The Court did not make inquiry as to that kind of  
24 information, but my main point in bringing this issue up is this  
25 again shows the problem with defining the universe of

1 information that was pulled off of the Internet which could be  
2 available to the Court through the ISP providers or through the  
3 other methods that I suggested in the sealed motion which we  
4 gave to the Court. And I might point out to the Court that we  
5 supplied an affidavit of an expert in conjunction with that to  
6 explain how that information could be harvested by the Court.  
7 If I could just have a moment, Your Honor.

8 THE COURT: Okay.

9 MR. LEACH: Judge, we have two jurors that went to the  
10 same source in order to get the indictment. I think it is a  
11 logical question as to whether or not one juror told the other  
12 juror, that is Seven told 40 or 40 told Seven about where they  
13 could find the indictment so that they could have a copy outside  
14 of the deliberation room. Because I am sure that it was the  
15 procedure in this Court that that indictment that went to the  
16 jury room stayed in the jury room and the jurors did not get to  
17 take that indictment home.

18 Judge, tying into David McDonald's question with regard  
19 to the jurors and contact with the Court's Web site. We suggest  
20 that the Court should inquire with Juror Seven and Juror 40  
21 whether either one of them at any point opened a PACER account.  
22 And I believe it is correct, Your Honor, that anybody can open a  
23 PACER account and to have access to the Court's Web site and can  
24 download any information that's available once they have a PACER  
25 account.

1 THE COURT: Well, they have to open -- the PACER  
2 account would not be accessible from this Court, it's actually  
3 accessible through I think San Antonio, that's where the  
4 documents are maintained.

5 MR. LEACH: And Your Honor, I believe the search  
6 histories that we have pointed out both in our expert's  
7 affidavit and in our sealed request would show all that  
8 information through the ISP provider or the other methods that  
9 we outlined for you.

10 Judge, we suggest that all jurors should have been  
11 asked whether they ever discussed via e-mail or text messages  
12 any extraneous information. In other words, was there any  
13 communication regarding extraneous information outside of the  
14 deliberative process here in this courthouse.

15 THE COURT: And you don't think that was covered in the  
16 Court's question number ten? And I will read it for the  
17 record. During the time that you were serving as a juror did  
18 any other juror say or do anything that caused you to believe  
19 that he or she had been exposed to extraneous information about  
20 this case from any source?

21 MR. LEACH: I really don't think it does, Judge, for  
22 this reason. When you were asking that whole line of questions  
23 I think that the way the jurors are perceiving those questions  
24 is did you ever witness things happening as opposed to actually  
25 engaging in, you know, end of the day communications by

1 telephone, by e-mail, by text messages, you know, having to do  
2 with what was going on during the deliberative process. And the  
3 only reason why I focus it specifically on extraneous  
4 information is because, Judge, I know that is your focus in this  
5 hearing, that you wanted to stay away from e-mails generally,  
6 but we do have at least one e-mail that relates to extraneous  
7 information. And I just -- I don't think that you had the focus  
8 sharp enough on that one particular e-mail. And I assume that  
9 the Court knows who, or whether that the second person in that  
10 e-mail is, in fact, a juror or not. And I represent to the  
11 Court that the defense does not know that.

12 THE COURT: I do not know.

13 MR. LEACH: Okay. I think that we -- I suggest  
14 respectfully, Your Honor, that you should make inquiry and we  
15 should learn that, we should know who was involved in that.

16 Judge, one thing that's unclear to me, and I think it's  
17 primarily because I don't recall how it happened during the  
18 deliberative process, but I think the jurors should be asked  
19 when and how and by whom they were provided copies of the  
20 indictment, copies of the jury instructions and copies of the  
21 juror service pamphlet, if they ever, in fact, received that.  
22 What I am confused about here is, I think the testimony that we  
23 heard today is that this juror service pamphlet is on the Web  
24 site, and that is where the foreperson went in order to find  
25 this portion on being a foreman. As I remember the affidavit of

1 Juror Number Five that was requested and eventually provided to  
2 all the jurors. But I personally don't recall that at all. And  
3 I think one could be left with the impression that the evidence  
4 here is that that information was provided to the other jurors  
5 by the foreperson. Maybe I am incorrect about that and that the  
6 Court never provided that information to the jurors.

7 THE COURT: Or that Juror Number Five could be  
8 mistaken.

9 MR. LEACH: Sir?

10 THE COURT: Or that Juror Number Five could be  
11 mistaken.

12 MR. LEACH: Yes, sir, could be. But if I remember the  
13 testimony of Juror Seven, he told the Court today that he, in  
14 fact, received that information. And I haven't seen the exhibit  
15 again, but I believe that exhibit is actually with the Court  
16 right now, and I am not clear that that is an exhibit that the  
17 Court at any point provided to the jury.

18 THE COURT: I will tell you that it was not an exhibit  
19 the Court provided to the jury. Now, parts of what he read may  
20 have been included from the Court's standard instructions to the  
21 jury but that exhibit itself was not provided to the jury for  
22 the purposes of this record.

23 MR. LEACH: Judge, finally, just in terms of the  
24 reasonable investigation of this Court, we would respectfully  
25 suggest, Judge, that there is a need now based on all of the

1 jurors who have talked about these Internet searches that have  
2 been conducted, there can be little doubt based on the testimony  
3 that there were Internet searches conducted. That the Court at  
4 this point issue subpoenas. That the Court control that  
5 information yourself. Whether we get access to it or not, that  
6 the Court get their -- its own expert if necessary in order to  
7 download that information. That you filter it if you see it  
8 necessary in terms of filtering it to the defense and the  
9 government. But we respectfully suggest that the next step in  
10 these proceedings should be to go to those sources that are  
11 outlined in our sealed motion and that you harvest that  
12 information and bring it into the breast of the Court so that we  
13 can make further determinations in this case. And Your Honor,  
14 if I could just have a moment with my co-counsel.

15 (Pause)

16 MR. LEACH: Just a couple of points, Judge. Point of  
17 clarification. I believe Juror 38 testified that Juror Seven  
18 said that -- told -- informed 38 that you could get a copy of  
19 the Court's instructions -- the jury instructions from the Web  
20 site. And that they came off of the Internet. Second point is  
21 that --

22 THE COURT: I'm sorry go back over that. Juror 38?

23 MR. LEACH: Yes, testified that Juror Seven said that  
24 you can get a copy of the jury instructions from the Web site  
25 off of the Internet. And one other point, Judge, about Juror

1 66's testimony about Juror 40. And the testimony there was that  
2 she had downloaded the indictment and worked on it over the  
3 weekend, and that there were notes on it from her work over the  
4 weekend. And Your Honor, if I am not mistaken all the notes  
5 that were taken during the course of the trial, the notes that  
6 were taken in the courtroom, were not available to the jurors  
7 outside of the courtroom. So, I think the Court needs to ask a  
8 line of questions of Juror 40 as to what were the notes composed  
9 of and where did they come from, with the possibility being,  
10 Your Honor, that they came from further research on the  
11 Internet. I don't know if that's true or not. But since the  
12 trial notes were not available to the juror, I am not exactly  
13 sure where the notes that were placed on that indictment would  
14 have come from.

15 THE COURT: I don't recall her saying that she took  
16 notes on the indictment that she downloaded.

17 MR. LEACH: I think Juror 66 testified that Juror  
18 Seven -- I mean that Juror 40 had worked on the indictment that  
19 she downloaded over the weekend. And I think Juror 40 also  
20 testified that there was one weekend where she was working on it  
21 and she wanted to read the indictment at her leisure and not  
22 under the pressure of all the other jurors being there and the  
23 confusion of deliberations. But I think 66 said that Juror 40  
24 came in and had notes on that indictment that she had been  
25 working on, whether it was over the weekend or overnight, I am

1 think it's odd at all that she was able to get to that Web site.  
2 We would submit to the Court that anybody with reasonable  
3 Internet search skills could get to that Web site. So we fall  
4 to see anything wrong with that, and certainly don't see any  
5 failure on the Court's part in making the inquiry into how she  
6 knew to get there.

7 He said that other jurors -- or at least one other  
8 juror, maybe more, I don't remember exactly how he characterized  
9 it, said Juror 40 took notes, and wanted the Court to ask more  
10 questions of either Juror 40 or the juror that made that  
11 statement about what were on the notes. The Court asked the  
12 jurors if anything was brought in from outside and discussed in  
13 the presence of the other jurors that was extraneous  
14 information. I don't know how the Court could have been any  
15 more specific on that subject. So we would simply state that we  
16 think the Court was more than careful in covering that issue as  
17 well.

18 They also say that they want the Court to ask Juror 40  
19 questions about these alleged handwritten notes and/or wanted  
20 the Court to inquire of trying to get copies of them. The Court  
21 gave Juror Number 40 -- took the extraordinary step, Your Honor,  
22 of issuing a subpoena to Juror Number 40 asking her for anything  
23 and everything that she had. Juror 40 came in here and after  
24 taking an oath told the Court she had brought the Court  
25 everything that she had. We would submit to Your Honor that no

1 not sure on that part of the testimony. But if it is over the  
2 weekend, you know, what could be the source of the notes since  
3 her notes from the trial were here in the courtroom. Thank you,  
4 Judge.

5 THE COURT: Any response?

6 MR. FEAGA: Yes, sir, Your Honor. Your Honor, I want  
7 to start with the statements and the objections raised by  
8 Mr. McDonald and generally respond to them the best I could take  
9 notes on what was a large volume of questions. But Mr. McDonald  
10 said that Juror 66 should have been asked more detailed  
11 questions. That was a running theme throughout the objections  
12 that both counsel for the Defendants in this case offered up to  
13 the Court. It's our position, Your Honor, that the Court asked  
14 extremely detailed questions about the matters that the Court  
15 needed to have looked into in order for the Court to make a  
16 decision, and that certainly there was no need to ask Juror 66  
17 any more detailed questions than whether or not anything of any  
18 kind what so ever of an extraneous nature influenced her  
19 decision-making in this trial. And that was where the Court was  
20 going, and it's clear to us anyway that that has been thoroughly  
21 gone into.

22 Mr. McDonald also said that Juror 40 should have been  
23 asked about how she got to the MDA Web site. For some reason or  
24 another he thinks it's odd that she was able to get to that Web  
25 site. We would just state, Your Honor, we disagree. We don't

1 matter how far you went with this questioning you would never  
2 have satisfied these defense attorneys, and more importantly  
3 their clients. But we think you asked all you needed to ask and  
4 you got the answer to that question. They are just not happy  
5 with what they heard.

6 They say that you should have asked about these e-mails  
7 that they admit and claim were anonymously mailed to them. They  
8 have no idea whether these e-mails are accurate, they have no  
9 idea whether they are authentic. They simply state that they  
10 got them in the mail. Now, Your Honor, what we do know is that  
11 Juror Number 40 in a published press account down in Mobile  
12 stated that those e-mails are not hers. She disavowed them in a  
13 public media forum. So they have an answer to that question,  
14 they just don't like it.

15 But we would submit to Your Honor that the Court  
16 covered the questions about the e-mails more than adequately in  
17 the questions that the Court asked. The Court asked about  
18 whether or not they have heard anything about the penalty. One  
19 of these alleged anonymous e-mails talks about the penalty I  
20 think is what is in this anonymous alleged e-mail. The Court  
21 asked did anybody have any extraneous information on that. They  
22 said no. And the other areas that are covered in those e-mails,  
23 Your Honor, we would submit don't go into the deliberative  
24 process anyway. It's extremely argumentative to claim that they  
25 do. But the Court's questions more than adequately covered

1 those, there's no need to go any further with that.  
 2 We also heard from Mr. McDonald that the preeminent  
 3 issue here is the Defendants' Sixth Amendment rights. We  
 4 dispute that, Your Honor. We think there's another preeminent  
 5 issue here. We think the Court is very much aware of it, but we  
 6 want to just state for the record that there's another very  
 7 important issue here, and that is the right of the public to a  
 8 fair trial. The right of the public to future fair trials. And  
 9 the Court has to be, as the Court was, very careful to make sure  
 10 it maintained balance. The last thing in the world this Court  
 11 wants to do is establish a precedent and a record for every  
 12 person that comes into the Middle District of Alabama to serve  
 13 potentially as a juror to think that they are going to be  
 14 subjected to investigations and inquiries and subpoenas and have  
 15 their personal mails and correspondence looked into by the very  
 16 criminals that they convicted. There's a very important right  
 17 here that is just as important as the Sixth Amendment rights,  
 18 and we think the Court handled that very well, Your Honor, so we  
 19 disagree with their objection on that.  
 20 I want to turn to Mr. Leach now. Mr. Leach said that  
 21 they were denied by the Court's refusal to enter subpoenas to  
 22 the Internet service providers and to the employers of various  
 23 jurors, and to the jurors, not just for their records, but to  
 24 seize their computers. He says they that were denied their  
 25 ability to corroborate and impeach --

1 MR. LEACH: Judge, we never asked to seize anybody's  
 2 computers, ever.  
 3 THE COURT: Let him state for the record, Mr. Leach.  
 4 MR. FEAGA: -- so that they can corroborate and impeach  
 5 the testimony of these 12 citizens, whose only offense was to  
 6 agree to come in here and do their public duty. And now these  
 7 convicted criminals want to establish a precedent in this Court  
 8 that they should be allowed to investigate jurors. We would  
 9 submit to the Court that the Court handled that well also.  
 10 They said -- Mr. Leach said that you should have asked  
 11 Juror Number Five more questions. They wanted you, I guess,  
 12 Your Honor, to take that affidavit, which the Court I think  
 13 knows the United States thinks was obtained in a highly  
 14 questionable fashion. That it is highly questionable about  
 15 whether that affidavit was obtained in violation of this Court's  
 16 rules. The lawyer that took the affidavit -- the second  
 17 affidavit after meeting with lawyers for Defendant Siegelman  
 18 said as much if you read her testimony when the Court is  
 19 questioning her about that that she went back up there because  
 20 she didn't think the first one was good enough and she was by  
 21 golly going to try to get more information that would be -- she  
 22 says I didn't want to ask him questions about his mental state,  
 23 that's where my husband was, I wanted to get to those questions  
 24 that might be important. Important to what, Your Honor?  
 25 Important to giving them some argument that there was something

1 wrong with this juror. So we would submit to Your Honor that  
 2 you asked the right questions this time, the way that if someone  
 3 had been truly and fairly trying to ascertain whether or not  
 4 Juror Number Five had any information that might indicate that  
 5 these individuals did not get a fair trial, would have been  
 6 asked back at the time. So we think that Mr. Leach was wrong  
 7 there.  
 8 I have already addressed the issue of whether or not --  
 9 and Mr. Leach covered as did Mr. McDonald this desire on the  
 10 part of these Defendants for the Court to conduct an  
 11 investigation of the jury, and also mentioned that they just  
 12 can't get what they need unless the Court subpoenas their  
 13 Internet service providers and basically goes in behind  
 14 everything that these people under oath testified to Your Honor  
 15 that had happened, which we would submit was extraordinarily --  
 16 and one of the things the Court can do and we did is observe the  
 17 demeanor of these people. It was very evident to the United  
 18 States and we believe it was to the Court that these people were  
 19 telling the truth in the court today. And there's no need, and  
 20 certainly no public purpose would be served by having these  
 21 people's statements and testimony called into question today by  
 22 further inquiry and investigation as to whether or not they were  
 23 telling the truth, Your Honor. And we would submit to you on  
 24 behalf of the United States that we believe those witnesses were  
 25 telling the Court the absolute truth the best they could recall

1 It.  
 2 Your Honor, Mr. Leach also brought up Juror 66 claimed  
 3 that Juror 40 said -- he says Juror 66 said Juror 40 had  
 4 conducted research and had notes on stuff that she brought in,  
 5 and he says we don't have it. Your Honor, we have what we can  
 6 get, which is that they don't exist. Because the Court issued a  
 7 subpoena to Juror Number 40 and Juror 40 came in and brought to  
 8 the Court what Juror Number 40 has. The testimony from all of  
 9 the jurors was that nothing of that sort was used by any of the  
 10 jurors to influence any of the jurors during their  
 11 deliberations, and that is the inquiry that we think the Court  
 12 was focused on and we think the Court was properly focused on  
 13 and we disagree with Mr. Leach about that.  
 14 And then Mr. Leach brought up the information that --  
 15 says one of the jurors testified that Juror Seven looked up info  
 16 on an acquitted Defendant. Your Honor asked each of these  
 17 jurors whether any of that information of that nature or sort  
 18 was discussed by or entered into the deliberations in the jury  
 19 and the answer was that it had not. That was part and parcel of  
 20 them renewing their request that this Court issue subpoenas to  
 21 obtain records of these jurors.  
 22 And lastly, Your Honor, we have the objections of  
 23 Mr. Scrusby when Mr. Leach went back over to check with him on  
 24 whether or not he was finished. Mr. Scrusby wanted him to bring  
 25 up the fact that Juror 38 said that Juror Seven told her you

1 could get a copy of jury instructions off the Internet. Once  
2 again, Your Honor, the questions that the Court asked more than  
3 adequately covered whether or not there was any extraneous  
4 information of that nature that came into play in the  
5 deliberations of the jury.

6 Lastly, I think Mr. Scrusby said that Juror 66 says  
7 that Juror 40 took notes and that the notes of Juror 40 should  
8 be inquired into about the notes that she took, Your Honor. And  
9 again, we think the Court adequately covered that and we object  
10 to the Court going any further on that.

11 Your Honor, I am going to finish up fairly briefly with  
12 this statement generally about the objections that the defense  
13 has raised. Your Honor, we think the Court conducted an  
14 extraordinary examination into the questions that were raised by  
15 the defense in their motion, questions that the defense raised  
16 with information that is highly suspect, both because of its  
17 anonymity and/or because of the way in which it was obtained,  
18 and the serious question about whether or not someone was trying  
19 to interfere with the due administration of justice in this  
20 case, as it is now flowing through its post-trial phase. Your  
21 Honor, there are -- I think it was King Solomon who once said  
22 that there are two things that will never be satisfied, one of  
23 them is a woman who wants to have children and can't have them  
24 and another one is the grave. And we would submit to Your Honor  
25 that there should be a third one added to that, and that third

1 one should be defense attorneys who are trying to get a case  
2 overturned.

3 They brought before the Court anonymous e-mails, they  
4 brought before the Court an improper interrogation of a juror,  
5 and the Court has now conducted a full inquiry into those and  
6 it's our belief and our position, we certainly will be arguing  
7 as the Court wants us to, that the Court now knows that these  
8 issues that were raised in these motions do not warrant the  
9 relief that the Defendants seek. And that is why, Your Honor,  
10 they are asking the Court to continue this inquiry, to continue  
11 and continue trying to find something that will give them a leg  
12 to go on. And Your Honor, we would submit to you that the Court  
13 has done all that it needs to do, all that it should do, and  
14 that we would respectfully ask that the Court render a decision  
15 based on the information that's before the Court now. Thank  
16 you.

17 THE COURT: Subject to counsel for Governor Siegelman  
18 being able to file a document which would adopt any pleadings  
19 that were filed by another Defendant either under seal or  
20 otherwise by the 27th, you have the Court's leave to do that.  
21 Anyone else who wishes to file anything needs to file motion for  
22 leave to file any pleadings outside of the Court's instructions  
23 today, otherwise I will take this motion under advisement. And  
24 if there are any further hearings required I will enter an order  
25 accordingly. We will be in recess.

(At which time, 3:26 p.m., the hearing was adjourned.)

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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.  
This 22nd day of November, 2006.

/s/ James R. Dickens  
Official Court Reporter